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LOK SABHA

The following Bills were introduced in Lok Sabha on the 23rd November, 1962:—

*BILL No. 115 OF 1962

A Bill further to amend the Income-tax Act, 1961 and the Wealth-tax Act, 1957.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

1. This Act may be called the Taxation Laws (Amendment) Act, Short title, 1962.

43 of 1961. 5 2. In section 2 of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), in clause (14), after sub-clause (iv), the following sub-clause shall be inserted, namely:— Amendment of section 2.

“(iv) 6½ per cent. Gold Bonds, 1977 issued by the Central Government.”.

10 3. In section 88 of the Income-tax Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:— Amendment of section 88.

15 “(1) Subject to the provisions of this section, the assessee shall be entitled to a deduction from the amount of income-tax on his total income with which he is chargeable for any assessment year of an amount equal to the income-tax calculated at the average rate of income-tax on any sums paid by him in the previous year—

20 (i) as donations to the National Defence Fund set up by the Central Government; or

(ii) as donations to any other fund or any institution to which this section applies; or

*The President has, in pursuance of clause (i) of article 117 and article 274 of the Constitution of India, recommended to Lok Sabha the introduction of the Bill.

(iii) as donations to Government or to any local authority made on or after the 1st April, 1960, to be utilised for any charitable purpose.”;

(ii) in sub-section (3), after the existing proviso, the following proviso shall be inserted, namely:—

“Provided further that where any sum paid during the previous year includes any donation to the National Defence Fund set up by the Central Government the amount covered by that donation shall be excluded in calculating the limits specified in this sub-section.”;

(iii) in sub-section (5), for the words “only to donations to an institution or fund established in India for a charitable purpose which”, the following shall be substituted, namely:—

“to donations to any institution or fund referred to in clause (ii) of sub-section (1), only if it is established in India for a charitable purpose and if it”.

Amendment
of section
193.

4. To section 193 of the Income-tax Act, the following proviso shall be added, namely:—

“Provided that no tax shall be deducted from any interest payable on 4½ per cent. National Defence Bonds, 1972 or 6½ per cent. Gold Bonds, 1977, where any such Bonds are held by an individual, not being a non-resident, and in the case of the Gold Bonds, the holder thereof makes a declaration in writing before the person responsible for paying the interest that the total nominal value of the Gold Bonds held by him including the Gold Bonds, if any, held on his behalf by any other person did not exceed ten thousand rupees at any time during the period to which the interest relates.”.

Amendment
of section 5
of Act 27
of 1957.

5. In section 5 of the Wealth-tax Act, 1957,—

(i) in sub-section (1), after clause (xvi), the following clause shall be inserted, namely:—

“(xvii) 6½ per cent. Gold Bonds, 1977.”;

(ii) in sub-section (2), for the word, brackets and figures “clause (xvi)”, the words, brackets and figures “clause (xvi) or clause (xvii)” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

It has become necessary to make certain amendments to the Income-tax Act, 1961 and the Wealth-tax Act, 1957 in order to provide for (i) the exemption of 6½ per cent. Gold Bonds, 1977 from tax on capital gains and wealth-tax, (ii) tax rebate on contributions made to the National Defence Fund, and (iii) a relaxation of the provisions regarding deduction of tax at source from the interest paid to individuals resident in India of the National Defence Bonds and the Gold Bonds.

The Bill seeks to secure the above objectives.

NEW DELHI;

MORARJI DESAI.

The 19th November, 1962.

*BILL NO. 114 OF 1962

A Bill to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title
commence-
ment and
application.

1. (1) This Act may be called the Major Port Trusts Act, 1962. 5

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It applies in the first instance to the major ports of Cochin, Kandla and Vishakhapatnam, and the Central Government may, by notification in the Official Gazette, apply the provisions of this Act to 10 such other major port (not being the major port of Bombay, Calcutta or Madras), and with effect from such date, as may be specified in the notification.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “appointed day”, in relation to a port, means the date on which this Act is made applicable to that port; 15

(b) “Board”, in relation to a port, means the Board of Trustees constituted under this Act for that port;

*The President has, in pursuance of clauses (1) and (3) of article 117 of the Constitution of India, recommended to Lok Sabha the introduction and consideration of the Bill.

(c) "Chairman" means the Chairman of a Board and includes the person appointed to act in his place under section 14;

8 of 1878.

(d) "Chief Customs-officer" has the same meaning as in the Sea Customs Act, 1878;

5 (e) "Deputy Chairman" means the Deputy Chairman of a Board and includes a person appointed to act in his place under section 14;

10 (f) "dock" includes all basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipways, gridirons, moorings, transit-sheds, warehouses, tramways, railways and other works and things appertaining to any dock, and also the portion of the sea enclosed or protected by the arms or groynes of a harbour;

15 (g) "foreshore", in relation to a port, means the area between the high-water mark and the low-water mark relating to that port;

(h) "goods" means every kind of movable property;

20 (i) "high-water mark", in relation to a port, means a line drawn through the highest points reached by ordinary spring-tides at any season of the year at the port;

15 of 1908.

(j) "Indian Ports Act" means the Indian Ports Act, 1908;

(k) "land" includes the bed of the sea or river below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth;

25 (l) "low-water mark", in relation to a port, means a line drawn through the lowest points reached by ordinary spring tides at any season of the year at that port;

(m) "major port" has the same meaning as in the Indian Ports Act;

30 (n) "master", in relation to any vessel or any aircraft making use of any port, means any person having for the time being the charge or control of such vessel or such aircraft, as the case may be, except a pilot, harbour master, assistant harbour master, dock master or berthing master of the port;

35 (o) "owner", (i) in relation to goods, includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods; and (ii) in relation to any vessel or any aircraft making use of any port, includes any part-owner, charterer, consignee, or mortgagee in possession thereof;

(p) "pier" includes any stage, stairs, landing place, hard, jetty, floating barge or pontoon, and any bridges or other works connected therewith;

(q) "port" means any major port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act; 5

(r) "port approaches", in relation to a port, means those parts of the navigable rivers and channels leading to the port, in which the Indian Ports Act is in force; 10

(s) "Port Trust security" means debentures, bonds or stock certificates issued by a Board in respect of any loan contracted by it under the provisions of this Act or issued by any other authority for the payment of which the Board is liable under this Act; 15

(t) "prescribed" means prescribed by rules or regulations made under this Act;

(u) "public securities" means— 20

(i) promissory notes, debentures, stock or other securities of the Central Government or of any State Government;

Provided that securities, both the principal whereof and the interest whereon have been fully and unconditionally guaranteed by any such Government shall be deemed, for the purposes of this clause, to be securities of such Government. 25

(ii) debentures or other securities for money issued by or on behalf of any municipal body, Improvement Trust or Port Trust under the authority of any law for the time being in force in India (including the Port Trust securities); 30

(v) "rate" includes any toll, due, rent, rate, fee, or charge leviable under this Act;

(w) "regulations" means regulations made by the Board under this Act; 35

(x) "rules" means rules made by the Central Government under this Act;

(y) "Trustee", in relation to a port, means a member of the Board constituted for the port;

(z) "vessel" includes a caisson;

5 (za) "wharf" includes any wall or stage and any part of the land or foreshore that may be used for loading or unloading goods, or for the embarkation or disembarkation of passengers and any wall enclosing or adjoining the same.

CHAPTER II

BOARD OF TRUSTEES AND COMMITTEES THEREOF

10 3. (1) With effect from such date as may be specified by notification in the Official Gazette, the Central Government shall cause to be constituted in respect of any major port a Board of Trustees to be called the Board of Trustees of that port, which shall consist of the following Trustees, namely:—

Constitution
of Board of
Trustees.

15 (a) a Chairman to be appointed by the Central Government;

(b) a Deputy Chairman, if the Central Government deems fit to appoint one;

20 (c) not more than ten persons to be appointed by the Central Government from amongst persons who are in its opinion capable of representing—

(i) labour employed in the port;

(ii) the Mercantile Marine Department;

(iii) the Customs Department;

25 (iv) the Government of the State in which the port is situated;

(v) the Defence Services;

(vi) the Indian Railways; and

(vii) such other interests as, in the opinion of the Central Government, ought to be represented on the Board:

30 Provided that before appointing any person under sub-clause (i), the Central Government shall obtain the opinion of the trade unions, if any composed of persons employed in the port and registered under the Indian Trade Unions Act, 1926;

16 of 1926.

35 (d) not more than fifteen persons to be elected by such State or local bodies representing commercial, shipping or local interests as the Central Government may, from time to time, by notification in the Official Gazette, specify.

(2) A Trustee appointed by the Central Government under this Act may be appointed by name or by virtue of office.

(3) Every notification issued under clause (d) of sub-section (1) may also specify the number of Trustees that each of the bodies referred to in that clause may elect. 5

(4) The election of Trustees under clause (d) of sub-section (1) shall be held within such period as may, from time to time, be specified by the Central Government.

(5) The chief executive authority of every electing body shall communicate forthwith to the Central Government the result of any election held in pursuance of sub-section (4). 10

(6) The names of persons appointed or elected as Trustees shall be notified by the Central Government in the Official Gazette.

First Board
of Trustees.

4. (1) Notwithstanding anything contained in section 3, the Central Government may, by notification in the Official Gazette, constitute in respect of any major port the first Board of Trustees thereof consisting of— 15

(a) a Chairman to be appointed by the Central Government,

(b) a Deputy Chairman if the Central Government deems fit to appoint one, and 20

(c) such number of other Trustees, not exceeding twenty-five, as that Government may deem expedient, to be appointed by that Government from amongst persons who are in its opinion capable of representing,—

(i) labour employed in the port; 25

(ii) Government of the State in which the port is situated; 30

(iii) Government departments specified in sub-clauses (ii), (iii), (v) and (vi) of clause (c) of sub-section (1) of section 3; and 35

(iv) such other interests as, in the opinion of the Central Government, ought to be represented on the Board.

(2) Subject to the provisions of sub-section (3), the persons appointed as Trustees under sub-section (1) shall hold office during the pleasure of the Central Government. 35

(3) On the constitution of the Board under section 3, the first Board of Trustees shall cease to exist and stand dissolved.

5. Every Board constituted under this Act shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property and may by the name by which it is constituted, sue or be sued:

Board to be
body cor-
porate.

5 Provided that no acquisition or sale of immovable property and no lease of any such property for a term exceeding thirty years shall be valid unless such acquisition, sale or lease has been made with the previous sanction of the Central Government.

6. A person shall be disqualified for being chosen as a Trustee, if
10 he—

Disqualifi-
cation for
office of Trustee.

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government involves moral turpitude; or

(b) is an undischarged insolvent; or

15 (c) holds any office of profit under the Board:

Provided that this disqualification shall not apply to the Chairman or Deputy Chairman;

20 (d) has directly or indirectly, any share or interest in any work done by order of the Board, or in any contract or employment, with, by, or on behalf of the Board:

Provided that no person shall be deemed to have a share or interest in such work, contract or employment by reason only of his—

25 (i) having a share in any company or firm which may contract with or be employed by or on behalf of the Board,
or

(ii) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Board may be inserted, or

30 (iii) being interested in any loan of money to the Board,
or

(iv) having a share or interest in any lease, sale, exchange or purchase of immovable property or any agreement for the same, or

35 (v) having a share or interest in any licence by the Board, or right by agreement or otherwise with the Board to the sole or preferential use of any railway siding or any berth for vessels in the docks belonging to the Board, or

(vi) having a share or interest in the occasional sale to the Board, to a value not exceeding ten thousand rupees in any one financial year, of any article in which he trades.

Term of
office of
Trustees.

7. (1) The Chairman and the Deputy Chairman shall hold office during the pleasure of the Central Government. 5

(2) Subject to the provisions of this Act,—

(a) every person elected or appointed by name to be a Trustee shall hold office to which he is elected or so appointed, for a term of two years commencing on the 1st day of April next following his election or appointment, as the case may be: 10

Provided that the term of office of a member elected to represent any body of persons shall come to an end as soon as he ceases to be a member of that body;

(b) a person appointed by virtue of an office to be a Trustee shall, until the Central Government by notification in the Official Gazette otherwise directs, continue to be a Trustee so long as he continues to hold that office. 15

Vacation of
office of
Trustees.

8. (1) The Central Government shall remove a Trustee if he—

(a) becomes subject to any of the disqualifications mentioned in section 6; or 20

(b) refuses to act or becomes incapable of acting; or

(c) is, without the permission of the Board previously obtained, absent from six consecutive ordinary meetings of the Board; or

(d) is absent from the meetings of the Board for a period exceeding six consecutive months; or 25

(e) acts in contravention of the provisions of section 19.

(2) A Trustee may resign his office by writing under his hand addressed to the Central Government, and on such resignation being accepted by that Government he shall be deemed to have vacated his office. 30

Eligibility of
Trustee for
re-appoint-
ment or
re-election.

9. Any person ceasing to be a Trustee shall, unless disqualified under section 6, be eligible for re-appointment or re-election.

Filling of
vacancies in
office of
Trustee.

10. (1) In the case of a vacancy in the office of a Trustee appointed by name or an elective Trustee caused by the expiration of the term of office of such Trustee, the appointment to fill such vacancy shall be made or an election to fill such vacancy shall be completed, as the case may be, within two months immediately preceding the date of expiration of such term. 35

(2) In the case of a vacancy in the office of a Trustee appointed by the Central Government by virtue of an office, the appointment to fill such vacancy shall be made within one month of the occurrence of such vacancy.

5 (3) In the case of a casual vacancy in the office of a Trustee appointed by name or an elective Trustee caused by the death of such Trustee or by virtue of the provisions of section 8, such vacancy shall be filled within one month of the occurrence thereof by appointment or election, as the case may be, in the manner hereinbefore specified:

10 Provided that the Trustee so appointed or elected shall retain his office so long only as the vacating Trustee shall have retained the same if such vacancy had not occurred.

11. Nothing in the foregoing provisions shall prevent a person being appointed by the Central Government to fill any vacancy in
15 the office of a Trustee appointed by the Central Government after the expiration of the period specified in section 10, if for any reason it has not been possible for the Central Government to make the appointment within the said period.

Saving provision for appointment of Trustee by Central Government after prescribed period.

12. (1) If the Central Government is satisfied that an electing body
20 has failed to elect a Trustee within the period specified therefor in sub-section (4) of section 3 or section 10 for reasons beyond its control, the Central Government may, by notification in the Official Gazette, direct that the election shall be held on or before such date as may be specified in the notification.

Power of Central Government to extend time for election or appointment of Trustees in default of election.

25 (2) In the event of default being made in electing any Trustee within the period specified therefor under sub-section (4) of section 3 or under section 10, or as the case may be, on or before the date specified in the notification issued under sub-section (1), it shall be lawful for the Central Government to appoint a person by notification
30 in the Official Gazette and the person so appointed shall be deemed to be an elective Trustee.

13. Where a Trustee is appointed under section 11 or under sub-section (2) of section 12 or elected in pursuance of a direction issued under sub-section (1) of section 12, the term of office of such Trustee
35 shall commence on the date on which his appointment or election, as the case may be, is notified in the Official Gazette and shall expire on the date on which his term of office would have expired if his appointment or election had been made within the period specified under sub-section (1) of section 10 or, as the case may be, under sub-section (4) of section 3.
40

Term of office in case of certain Trustees.

Absence of
Chairman
and Deputy
Chairman.

14. If the Chairman or the Deputy Chairman is, by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise, in circumstances not involving the vacation of his appointment, or is sent on deputation outside India for any of the purposes of this Act, the Central Government may appoint another person to act in his place during his absence: 5

Provided that the Chairman or the Deputy Chairman, while on deputation outside India may, if the Central Government by order so directs and subject to such conditions and restrictions as may be specified in that order, exercise such of the powers and perform such of the duties conferred or imposed on the Chairman or the Deputy Chairman, as the case may be, by or under this Act as he may deem necessary, and the Chairman or Deputy Chairman while exercising such powers and performing such duties shall be deemed to be a Trustee notwithstanding anything to the contrary contained in this Act. 10 15

Conditions
of service
of Chairman
and Deputy
Chairman.

15. The Chairman and the Deputy Chairman shall be paid such salary and be governed by such terms and conditions of service as may, from time to time, be determined by the Central Government.

Meetings of
the Board.

16. (1) A Board shall meet at such times and places and shall, subject to the provisions of sub-sections (2), (3) and (4), observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by rules made under this Act. 20

(2) The Chairman or, in his absence, the Deputy Chairman, and in the absence of both, any person chosen by the Trustees present from among themselves, shall preside at meetings of the Board. 25

(3) All questions at a meeting of the Board shall be decided by a majority of the votes of the Trustees present and voting and, in the case of an equality of votes, the person presiding shall have a second or casting vote. 30

(4) No business shall be transacted at any meeting of the Board unless not less than five Trustees are present throughout such meeting.

Committees
of Board.

17. (1) A Board may, from time to time, constitute from amongst the Trustees one or more committees, each consisting of such number as the Board may consider necessary, for the purpose of discharging such of its functions as may be delegated to such committee or committees by the Board. 35

(2) A committee constituted under this section shall meet at such times and at such places and shall observe such rules of pro-

cedure in regard to the transaction of business at its meetings (including the quorum) as may be provided by regulations made under this Act.

18. The Trustees shall be paid by the Board such fees and allowances for attending the meetings of the Board or of any of its committees and for attending to any other work of the Board as may be provided by rules made under this Act:

Fees and allowances payable to Trustees.

Provided that no fees shall be payable to the Chairman, Deputy Chairman or any other Trustee who is a servant of the Government.

19. No Trustee shall vote or take part in the discussion of any matter coming up for consideration at a meeting of the Board or any of its committees if the matter is one in which he has any direct or indirect pecuniary interest by himself or his partner, or in which he is interested professionally on behalf of a client or as agent for any person other than the Government or a local authority or a trade union registered under the Indian Trade Unions Act, 1926.

Restriction of power of Trustees to vote in certain cases.

16 of 1926.

20. No act or proceeding of a Board or of any of its committees shall be invalid merely by reason of—

Defects in appointments or election not to invalidate acts, etc.

- (a) any vacancy therein or any defect in the constitution thereof, or
- (b) any defect in the election or appointment of a person as a member thereof, or
- (c) any Trustee having acted or taken part in any proceedings in contravention of section 19, or
- (d) any irregularity in its procedure not affecting the merits of the case.

21. A Board may, with the approval of the Central Government, specify—

Delegation of powers.

- (a) the powers and duties conferred or imposed upon the Board by or under this Act, which may be exercised and performed by the Chairman; and
- (b) the powers and duties conferred or imposed on the Chairman by or under this Act, which may be exercised or performed by the Deputy Chairman or any officer of the Board and the conditions and restrictions, if any, subject to which such powers and duties may be exercised and performed:

Provided that any powers and duties conferred or imposed upon the Deputy Chairman or any officer of the Board under clause (b) shall be exercised and performed by him subject to the supervision and control of the Chairman.

Duties of
Chairman
and Deputy
Chairman.

22. (1) It shall be the duty of the Chairman and the Deputy Chairman to attend every meeting of the Board unless prevented by sickness or other reasonable cause. 5

(2) The Chairman shall, as soon as possible, transmit to the Central Government a copy of the minutes of every meeting of the Board and shall furnish to that Government such reports, returns, documents or other information as it may, from time to time, call for. 10

(3) The Chairman shall exercise supervision and control over the acts of all employees of the Board in matters of executive administration and any matters concerning the accounts and records of the Board. 15

CHAPTER III

STAFF OF THE BOARD

Schedule of
Board's
staff.

23. A Board shall, from time to time, prepare and sanction a Schedule of the employees of the Board whom it deems necessary and proper to maintain for the purposes of this Act and such Schedule shall indicate therein the designations and grades of employees and the salaries, fees and allowances which are proposed to be paid to them. 20

Power to
make
appoint-
ments.

24. (1) Subject to the provisions of the Schedule for the time being in force sanctioned by a Board under section 23, the power of appointing the employees of the Board, to any posts, whether temporary or permanent, shall— 25

(a) in the case of Heads of departments, be exercisable by the Central Government after consultation with the Chairman;

(b) in the case of an employee (other than the Head of a Department), where the appointment relates to a post the maximum of the pay-scale for which (exclusive of allowances) exceeds such amount as the Central Government may from time to time fix in this behalf, and where no such amount has been fixed, is not less than one thousand rupees, be exercisable by the Board; 30

(c) in the case of any other post, be exercisable by the Chairman: 35

Provided that no person shall be appointed as a pilot at any port, who is not for the time being authorised by the Central Government under the provisions of the Indian Ports Act to pilot vessels at that port.

- 5 (2) The Central Government may, by order, specify any post the incumbent of which shall, for the purposes of this Act, be regarded as the Head of a department.

25. Subject to any regulations made under section 28, the power of promoting, granting extension of service to, granting leave to, suspending, reducing, removing or dismissing or of disposing of any other question relating to the services of, the employees of a Board including the power of dispensing with the services of any such employee otherwise than by reason of the misconduct of such employee, shall be exercised—

Power to promote, grant leave, etc., to employees of Board.

- 15 (a) in the case of an employee referred to in clause (c) of sub-section (1) of section 24, by the Chairman; and

(b) in the case of every other employee, by the Board:

Provided that every such order shall, so far as the same involves extension of service, suspension, reduction in rank, removal or dismissal of any employee referred to in clause (b), be subject to the sanction of the Central Government.

26. A Board may appoint any person as Consulting Engineer to the Board otherwise than on the basis of payment of a monthly salary, but every such appointment shall be subject to the sanction of the Central Government.

Consulting Engineer to Board.

27. Notwithstanding anything contained in section 23, no post other than a post referred to in clause (c) of sub-section (1) of section 24 shall be created except with the sanction of the Central Government.

Sanction of Central Government necessary in case of creation of certain posts.

30 28. A Board may make regulations, not inconsistent with this Act, to provide for any one or more of the following matters, namely:—

Power to make regulations.

(a) the appointment, promotion, suspension, removal and dismissal of its employees;

(b) their leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a Provident Fund or any other fund for their welfare;

(c) any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of its employees.

CHAPTER IV

PROPERTY AND CONTRACTS

Transfer of assets and liabilities of the Central Government, etc., to the Board.

29. As from the appointed day in relation to any port— 10

(a) all property, assets and funds vested in the Central Government or, as the case may be, any other authority for the purposes of the port immediately before such day, shall vest in the Board;

(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done, by, with or for the Central Government or, as the case may be, the other authority immediately before such day, for or in connection with the purposes of the port, shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Board; 15 20

(c) all non-recurring expenditure incurred by the Central Government or any State Government for or in connection with the purposes of the port up to such day and declared to be capital expenditure by the Central Government shall be treated as the capital provided by the Central Government or, as the case may be, the State Government to the Board; 25

(d) all rates, fees, rents and other sums of money due to the Central Government or, as the case may be, the other authority in relation to the port immediately before such day shall be deemed to be due to the Board; 30

(e) all suits and other legal proceedings instituted or which might have been instituted by or against the Central Government or, as the case may be, the other authority immediately

before such day for any matter in relation to the port may be continued or instituted by or against the Board;

(f) every employee serving under the Central Government or, as the case may be, the other authority immediately before such day solely for or in connection with the affairs of the port shall become an employee of the Board, shall hold his office or service therein by the same tenure and upon the same terms and conditions of service as he would have held the same if the Board had not been established and shall continue to do so unless and until his employment in the Board is terminated or until his tenure, remuneration or terms and conditions of service are duly altered by the Board:

Provided that the tenure, remuneration and terms and conditions of service of any such employee shall not be altered to his disadvantage without the previous sanction of the Central Government.

30. As from the appointed day, all rates, fees and other charges in relation to any port, shall, unless and until they are varied by the competent authority in accordance with the provisions of this Act, continue to be levied and collected at the same rate at which they were being levied and collected by the Central Government or, as the case may be, any other authority immediately before such day.

Existing rates, etc., to continue until altered by Board.

31. A Board shall repay, at such intervals and on such terms and conditions as the Central Government may determine, the amount of capital provided under clause (c) of section 29 with interest at such rate as may be fixed by that Government and such repayment of capital or payment of interest shall be deemed to be part of the expenditure of the Board.

Repayment of capital with interest.

32. Whenever any immovable property which is required for the purposes of the Board cannot be acquired by agreement, the Central Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894, and on payment by the Board of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Board.

Procedure when immovable property cannot be acquired by agreement.

33. Subject to the provisions of section 34, a Board shall be competent to enter into and perform any contract necessary for the performance of its functions under this Act.

Contracts by Board.

Mode of
executing
contracts on
behalf of
Board.

34. (1) Every contract shall on behalf of a Board be made by the Chairman and shall be sealed with the common seal of the Board:

Provided that no contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf shall be made unless it has been previously approved by the Board:

Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years, and no other contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf, shall be made unless it has been previously approved by the Central Government.

(2) Subject to the provisions of sub-section (1), the form and manner in which any contract shall be made under this Act shall be such as may be prescribed by regulations made in this behalf.

(3) No contract which is not made in accordance with the provisions of this Act and the regulations made thereunder shall be binding on the Board.

CHAPTER V

WORKS AND SERVICES TO BE PROVIDED AT PORTS

Power of
Board to
execute
works and
provide
appliances.

35. (1) A Board may execute such works within or without the limits of the port and provide such appliances as it may deem necessary or expedient.

(2) Such works and appliances may include—

(a) wharves, quays, docks, stages, jetties, piers and other works within the port or port approaches or on the foreshore of the port or port approaches, with all such convenient arches, drains, landing places, stairs, fences, roads, railways, bridges, tunnels and approaches and buildings required for the residence of the employees of the Board as the Board may consider necessary;

(b) buses, railways, locomotives, rolling stock, sheds, hotels, warehouses and other accommodation for passengers and goods and other appliances for carrying passengers and for conveying, receiving and storing goods landed, or to be shipped or otherwise;

(c) moorings and cranes, scales and all other necessary means and appliances for loading and unloading vessels;

(d) reclaiming, excavating, enclosing and raising any part of the foreshore of the port or port approaches which may be necessary for the execution of the works authorised by this Act, or otherwise for the purposes of this Act;

5 (e) such breakwaters and other works as may be expedient for the protection of the port;

(f) dredgers and other machines for cleaning, deepening and improving any portion of the port or port approaches or of the foreshore of the port or port approaches;

10 (g) lighthouses, lightships, beacons, buoys, pilot boats and other appliances necessary for the safe navigation of the port and of the port approaches;

15 (h) vessels, tugs or other boats for use within the limits of the port or beyond those limits, whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any vessel, whether entering or leaving the port or bound elsewhere, and for the purpose of saving or protecting life or property and for the purpose of landing, shipping or transshipping passengers or goods under section 42;

20 (i) the sinking of tube-wells, and the equipment, maintenance and use of boats, barges and other appliances for the purpose of the supply of water at the port;

(j) engines and other appliances necessary for the extinguishing of fires.

25 36. A Board may undertake to carry out on behalf of any person any works or services or any class of works or services, on such terms and conditions as may be agreed upon between the Board and the person concerned.

Power of Board to undertake certain works.

30 37. (1) When any dock, berth, wharf, quay, stage, jetty or pier erected at any port or port approaches under the provisions of this Act has been completed with sufficient warehouses, sheds and appliances for receiving, landing or shipping goods or passengers from and upon sea-going vessels, the Board may after obtaining the approval of the Chief Customs-officer and by notification published
35 in three consecutive issues of the Official Gazette, declare that such dock, berth, wharf, quay, stage, jetty or pier is ready for receiving, landing and shipping or for landing or for shipping goods or passengers from and upon sea-going vessels.

Sea-going vessels compelled to use docks, wharves, etc.

40 (2) As from the date of the publication of such notification for the third time, it shall be lawful for the Board from time to time,

when there is room at such dock, berth, wharf, quay, stage, jetty or pier, to order to come alongside of such dock, berth, wharf, quay, stage, jetty or pier for the purpose of landing and shipping goods or passengers or for landing or for shipping the same, any sea-going vessel within the port or port approaches which has not commenced⁵ to discharge goods or passengers, or which being about to take in goods or passengers, has not commenced to do so:

Provided that before making such order, the Board shall have regard, as far as possible, to the convenience of such vessel and of the shippers, in respect of the use of any particular dock, berth, wharf, quay, stage, jetty or pier:

Provided further that if the Board is not the conservator of the port, the Board shall not itself make the order as aforesaid but shall require the conservator of the port, or other person exercising the rights, powers, and authorities of the conservator of the port, to make¹⁵ such order.

If accommodation sufficient, all sea-going vessels compelled to use docks, wharves, etc.

38. When a sufficient number of docks, berths, wharves, quays, stages, jetties or piers have been provided at any port or port approaches as aforesaid, the Board may, after obtaining the approval of the Chief Customs-officer and by notification published in three²⁰ consecutive issues of the Official Gazette, direct that no goods or passengers shall be landed or shipped from or upon any sea-going vessel within the port or port approaches otherwise than at such docks, berths, wharves, quays, stages, jetties or piers, except with the sanction of the Board and in accordance with such conditions as²⁵ the Board may specify.

Power to order vessels not to come alongside of or to be removed from docks, wharves, etc.

39. Any officer appointed by the Board in this behalf may, in cases of emergency or for any reason which appears to him sufficient, by notice in writing, order the master or owner or agent of any sea-going vessel not to bring such vessel alongside of, or to remove such³⁰ vessel from, any dock, berth, wharf, quay, stage, jetty or pier belonging to or under the control of the Board, and, if such notice is not complied with, the Board may charge in respect of such vessel such sum as it thinks fit, not exceeding one thousand rupees for each day of twenty-four hours, or portion of such day, during which such³⁵ vessel remains at such dock, berth, wharf, quay, stage, jetty or pier:

Provided that in the case of a vessel ordered to be removed, such charge shall not commence to be made till after the expiry of twelve hours from the service of such notice as aforesaid on the master or owner or agent of the vessel.

40. Notwithstanding anything contained in sections 37 and 38, the Central Government may, if in its opinion it is necessary in the public interest so to do, by general or special order, from time to time, permit certain specified vessels or classes of vessels to discharge or
 5 ship goods or certain specified goods or classes of goods, at such place in a port or within the port approaches, in such manner, during such period and subject to such payments to the Board and on such conditions as the Central Government may think fit.

Power of Central Government to exempt from obligation to use docks, wharves, etc.

41. (1) When any dock, berth, wharf, quay, stage, jetty or pier
 10 for receiving, landing or shipment of goods or passengers from or upon vessels, not being sea-going vessels, has been made and completed with all proper appliances in that behalf, the Board may, after obtaining the approval of the Chief Customs-officer, by order published in three consecutive issues of the Official Gazette,—

All vessels other than sea-going vessels compelled to use docks, wharves, etc.

15 (i) declare that such dock, berth, wharf, quay, stage, jetty or pier is ready for receiving, landing or shipment of goods or passengers from or on vessels, not being sea-going vessels, and

(ii) direct that within certain limits to be specified therein it shall not be lawful, without the express sanction of the Board,
 20 to land or ship any goods or passengers out of, or into, any vessel, not being a sea-going vessel, of any class specified in such order, except at such dock, berth, wharf, quay, stage, jetty or pier.

(2) As from the date of the publication of the order mentioned in sub-section (1) for the third time, it shall not be lawful, without the
 25 consent of the Board, for any vessel of such class,—

(i) to land or ship any goods or passengers at any place within the limits so specified except at such dock, berth, wharf, quay, stage, jetty or pier; or

30 (ii) while within such limits, to anchor, fasten or lie within fifty yards of the ordinary low-water mark.

(3) If after the publication of such order, any such vessel shall while within the limits so specified, so anchor, fasten or lie, it shall be lawful for the Board to cause the same to be removed out of the said limits at the expense of the master or owner or agent of the
 35 vessel.

42. (1) A Board shall have power to undertake or provide the following services:—

Performance of services by Board.

40 (a) landing, shipping or transhipping passengers, and goods between vessels in the port and the wharves, piers, quays or docks belonging to or in the possession of the Board;

(b) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises;

(c) carrying passengers by rail or by other means within the limits of the port or port approaches, subject to such restrictions and conditions as the Central Government may think fit to impose; and

(d) receiving and delivering, transporting and booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways, or *vice versa*, as a railway administration under the Indian Railways Act, 1890. 5

9 of 1890.

(2) A Board may, if so requested by the owner, take charge of the goods for the purpose of performing the service or services and shall give a receipt in such form as the Board may specify. 10

(3) After any goods have been taken charge of and a receipt given for them under this section no liability for any loss or damage which may occur to them shall attach to any person to whom a receipt has been given or to the master or owner of the vessel from which the goods have been landed or transhipped. 15

Responsibility of any Board for loss, etc., of goods.

43. (1) Subject to the provisions of this Act, the responsibility of any Board for the loss, destruction or deterioration of goods of which it has taken charge shall,—

(i) in the case of goods received for carriage by railway, be governed by the provisions of the Indian Railways Act, 1890; and 20

9 of 1890.

(ii) in other cases, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872, omitting the words "in the absence of any special contract" in section 152 of that Act: 9 of 1872.

Provided that no responsibility under this section shall attach to the Board until a receipt mentioned in sub-section (2) of section 42 is given by the Board. 25

(2) A Board shall not be in any way responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge, unless notice of such loss or damage has been given within such period as may be prescribed by regulations made in this behalf from the date of the receipt given for the goods under sub-section (2) of section 42. 30

Accommodation to be provided for customs officers in wharves, etc., appointed under Sea Customs Act.

44. Where the Chief Customs-officer has, under the provisions of any Act for the levy of duties of customs, appointed any dock, berth, wharf, quay, stage, jetty, pier, warehouse or shed or a portion of any warehouse or shed provided at any port under the provisions of this Act for the use of sea-going vessels to be a wharf for the landing or shipping of goods or a warehouse for the storing of dutiable goods on the first importation thereof without payment of duty, within the 40

meaning of the first-mentioned Act, the Board shall set apart and maintain such place on or adjoining such dock, wharf, quay, stage, jetty or pier, or in such warehouse or shed or portion thereof, for the use of officers of customs as may be necessary.

5 45. Notwithstanding that any wharf, quay, stage, jetty, pier, ware-
house or shed or portion thereof at any port has under the provisions
of section 44, been set apart for the use of the officers of customs at
the port, all rates, tolls and other charges payable under this Act
in respect thereof, or for the storage of goods therein, shall be pay-
10 able to the Board, or to such person or persons as may be appointed
by the Board to receive the same.

Dues at
customs
wharves,
etc.

15 46. (1) No person shall make, erect or fix within the limits of a
port or port approaches any wharf, dock, quay, stage, jetty, pier,
erection or mooring except with the previous permission in writing
of the Board and subject to such conditions, if any, as the Board may
specify.

Power to
permit erec-
tion of
private
wharves,
etc., within
a port sub-
ject to con-
ditions.

(2) If any person makes, erects or fixes any wharf, dock, quay,
stage, jetty, pier, erection or mooring in contravention of sub-section
(1), the Board may, by notice, require such person to remove it
20 within such time as may be specified in the notice and if the person
fails so to remove it, the Board may cause it to be removed at the
expense of that person.

25 47. (1) Where, as a result of an order published under section 38
or section 41, the use of any wharf, dock, quay, stage, jetty, pier,
erection or mooring made, fixed or erected by any person is rendered
unlawful, the Board may, after hearing the person concerned, by
order, close, remove, fill up or destroy such wharf, dock, quay, stage,
jetty, pier, erection or mooring or permit the use thereof to such
person on payment of such dues, rates and charges as the Board may,
30 with the previous sanction of the Central Government, determine.

Compensa-
tion pay-
able in cer-
tain cases
where use of
any private
wharf,
etc., render-
ed unlawful.

(2) Save as otherwise provided under sub-section (3) no person
shall be entitled to claim compensation for any injury, damage or
loss caused or alleged to have been caused by an order made under
sub-section (1).

35 (3) If it is proved to the satisfaction of the Board that any
such wharf, dock, quay, stage, jetty, pier, erection or mooring was
made, fixed or erected by any person with the previous permission
of the authority competent to grant such permission, he shall be
paid by the Board compensation the amount of which shall be de-
40 termined in the manner and in accordance with the principles here-
inafter set out, that is to say—

(a) in computing the compensation, there shall not be
taken into account any tolls, dues, rates or charges which such

person shall be liable to pay for using any wharf, quay, stage, jetty, pier, erection or mooring provided by the Board;

(b) the amount of compensation shall be calculated with reference to the cost of construction of such wharf, quay, stage, jetty, pier, erection or mooring; 5

(c) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(d) where no such agreement can be reached, the Central Government shall appoint as arbitrator, a person who is, or has been, or is qualified for appointment as, a Judge of a High Court; 10

(e) the Central Government may, in any particular case, nominate a person possessing special knowledge of any matter relating to any case under inquiry to assist the arbitration in determining any question which has to be decided by him under this section, and where such nomination is made the person to be compensated may also nominate an assessor for the same purpose; 15

(f) at the commencement of the proceeding before the arbitrator, the Board and the person to be compensated shall state what in their respective opinion is a fair amount of compensation: 20

(g) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specify the person or persons to whom such compensation shall be paid; 25

(h) where there is a dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof among such persons: 30

(i) nothing in the Arbitration Act, 1940 shall apply to arbitrations under this section: 10 of 1940.

(j) the arbitrator appointed under this section, while holding arbitration proceedings under this Act, shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters,— 35

(i) summoning and enforcing the attendance of any person and examining him on oath; 5 of 1908.

(ii) requiring the discovery and production of documents;

(iii) receiving evidence on affidavits;

(iv) issuing commissions for examination of witnesses or documents;

(k) any person aggrieved by an award of the arbitrator made under this section may, within thirty days from the date of the award, prefer an appeal to the High Court within whose jurisdiction the port is situated:

Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time;

(l) every award shall also state the amount of costs incurred in the arbitration proceedings under this section and by what persons and in what proportions they are to be paid.

CHAPTER VI

IMPOSITION AND RECOVERY OF RATES AT PORTS

48. (1) Every Board shall from time to time frame a scale of rates at which, and a statement of the conditions under which, any of the services specified hereunder shall be performed by itself at or in relation to the port or port approaches—

Scale of rates for services performed by Board.

(a) transhipping of passengers or goods between vessels in the port or port approaches;

(b) landing and shipping of passengers or goods from or to such vessels to or from any wharf, quay, jetty, pier, dock, berth, mooring, stage or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;

(c) crannage or portorage of goods on any such place;

(d) wharfage, storage or demurrage of goods on any such place;

(e) any other service in respect of vessels, passengers or goods, excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act.

(2) Different scales and conditions may be framed for different classes of goods and vessels.

Scale of rates and statement of conditions for use of property belonging to Board.

49. (1) Every Board shall, from time to time, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to or in the possession or occupation of the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder:— 5

(a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;

(b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods; 10

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;

(d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board. 15

(2) Different scales and conditions may be framed for different classes of goods and vessels.

Consolidated rates for combination of services.

50. A Board may, from time to time, frame a consolidated scale of rates for any combination of the services specified in section 48 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in section 49. 20

Power to levy concessional rates of charges on coastal goods.

51. In framing scales under any of the foregoing provisions of this Chapter, the Board may prescribe a lower rate of charges in respect of.— 25

(a) coastal goods carried in a vessel from one Indian port to another Indian port:

Provided that the Board shall not make any discrimination between one Indian port and another such port in prescribing a lower rate of charges under this section; 30

(b) other goods, in special cases.

Prior sanction of Central Government to such scales.

52. Every scale of rates and every statement of conditions framed by a Board under the foregoing provisions of this Chapter shall be submitted to the Central Government for sanction and shall have effect when so sanctioned and published by the Board in the Official Gazette. 35

53. A Board may, in special cases and for reasons to be recorded in writing, exempt either wholly or partially any goods or class of goods from the payment of any rate or of any charge leviable thereon according to any scale in force under this Act or remit the whole or
5 any portion of such rate or charge so levied.

Exemption from, and remission of, rates or charges.

54. (1) Whenever the Central Government considers it necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct any Board to cancel any of the scales in force or modify the same, within such period
10 as that Government may specify in the order.

Power of Central Government to require modification or cancellation of rates.

(2) If any Board against whom a direction is made under subsection (1) falls or neglects to comply with such direction within the specified period, the Central Government may cancel any of such scales or make such modifications therein as it may think fit.

15 Provided that before so cancelling or modifying any scale the Central Government shall consider any objection or suggestion which may be made by the Board during the specified period.

(3) When in pursuance of this section any of the scales has been cancelled or modified, such cancellation or modification shall be
20 published by the Central Government in the Official Gazette and shall thereupon have effect accordingly.

55. No person shall be entitled to a refund of an overcharge made by a Board unless his claim to the refund has been preferred in writing by him or on his behalf to the Board within six months from
25 the date of payment duly supported by all relevant documents:

Refund of overcharges.

Provided that a Board may of its own motion remit overcharges made in its bills at any time.

56. (1) When any Board is satisfied that any charge leviable under this Chapter has been short-levied or erroneously refunded,
30 it may issue a notice to the person who is liable to pay such charge or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Notice of payment of charges short-levied or erroneously refunded.

Provided that no such notice shall be issued after the expiry of
35 two years,—

(a) where the charge is short-levied, from the date of the payment of the charge;

(b) where a charge has been erroneously refunded, from the date of the refund.

(2) The Board may, after considering the representation, if any, made by the person to whom notice is issued under sub-section (1), determine the amount due from such person and thereupon such person shall pay the amount so determined.

Board not to
lease rates
without
sanction.

57. A Board shall not lease, farm, sell or alienate any power vested in it under this Act of levying rates without the prior sanction of the Central Government. 5

Time for
payment of
rates on
goods.

58. Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of a Board, or to be shipped for export, or to be transhipped, shall be payable before the goods are so removed or shipped or transhipped. 10

Board's lien
for rates.

59. (1) For the amount of all rates leviable by a Board under this Act in respect of any goods, and for the rent due to the Board for any buildings, plinths, stacking areas, or other premises on or in which any goods may have been placed, the Board shall have a lien on such goods, and may seize and detain the same until such rates and rents are fully paid. 15

(2) Such lien shall have priority over all other liens and claims, except for general average and for the ship-owner's lien upon the said goods for freight and other charges where such lien exists and has been preserved in the manner provided in sub-section (1) of section 60, and for money payable to the Central Government under any law for the time being in force. 20

Master's lien
for freight
and other
charges.

60. (1) If the master or owner of any vessel or his agent, at or before the time of landing from such vessel any goods at any dock, wharf, quay, stage, jetty, berth, mooring or pier belonging to or in the occupation of a Board, gives to the Board a notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the shipowner, to an amount to be mentioned in such notice, such goods shall continue to be liable to such lien to such amount. 25 30

(2) The goods shall be retained in the custody of the Board at the risk and expense of the owners of the goods until such lien is discharged as hereinafter mentioned; and godown or storage rent shall be payable by the party entitled to such goods for the time during which they may be so retained. 35

(3) Upon the production before any officer appointed by the Board in that behalf of a document purporting to be a receipt for, or release from, the amount of such lien, executed by the person by 40

whom or on whose behalf such notice has been given, the Board may permit such goods to be removed without regard to such lien, provided that the Board shall have used reasonable care in respect to the authenticity of such document.

- 5 61. (1) A Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the land-
10 ing of the animals or goods as the Board may think fit, sell by public auction such goods or so much thereof as, in the opinion of the Board, may be necessary—
- Sale of goods after two months if rates or rent are not paid or lien for freight is not discharged.

(a) if any rates payable to the Board in respect of such goods have not been paid, or

15 (b) if any rent payable to the Board in respect of any place on or in which such goods have been stored has not been paid, or

20 (c) if any lien of any shipowner for freight or other charges of which notice has been given has not been discharged and if the person claiming such lien for freight or other charges has made to the Board an application for such sale.

(2) Before making such sale, the Board shall give ten days' notice of the same by publication thereof in the Official Gazette and also in at least one of the principal local daily newspapers:

25 Provided that in the case of animals and perishable or hazardous goods, the Board may give such shorter notice as, in the opinion of the Board, the urgency of the case admits of.

30 (3) If the address of the owner of the goods has been stated on the manifest of the goods or in any of the documents which have come into the hands of the Board, or is otherwise known, notice shall also be given to him by letter delivered at such address, or sent by post, but the title of a *bona fide* purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to inquire whether such notice has been sent.

35 (4) Notwithstanding anything contained in this section, arms and ammunition and controlled goods may be sold at such time and in such manner as the Central Government may direct.

Explanation.—In this section and section 62—

40 (a) "arms and ammunition" have the meanings respectively assigned to them in the Arms Act, 1959;

(b) "controlled goods" means goods the price or disposal of which is regulated under any law for the time being in force.

Disposal of
goods not
removed
from
premises
of Board
within time
limit.

62. (1) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody, the Board may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in the Official Gazette and also in at least one of the principal local daily newspapers, requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction: 5 10 15

Provided that where all the rates and charges payable under this Act in respect of any such goods have been paid, no notice of removal shall be so served or published under this sub-section unless two months have expired from the date on which the goods were placed in the custody of the Board. 20

(2) The notice referred to in sub-section (1) may also be served on the agents of the vessel by which such goods were landed.

(3) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1), the Board may, at any time after the expiration of two months from the date on which such goods were placed in its custody, sell the goods by public auction after giving notice of the sale in the manner specified in sub-sections (2) and (3) of section 61. 25

(4) Notwithstanding anything contained in sub-section (1) or sub-section (3)— 30

(a) the Board may, in the case of animals and perishable or hazardous goods, give such shorter notice under any of those sub-sections as, in the opinion of the Board, the urgency of the case requires;

(b) arms and ammunition and controlled goods may be sold in accordance with the provisions of sub-section (4) of section 61. 35

(5) The Central Government may, if it deems necessary so to do in the public interest, by notification in the Official Gazette, exempt any goods or classes of goods from the operation of this section. 40

63. (1) The proceeds of every sale under section 61 or section 62 shall be applied in the following order:—

Application
of sale pro-
ceeds.

- (a) in payment of the expenses of the sale;
- (b) in payment, according to their respective priorities, of the liens and claims excepted in sub-section (2) of section 59 from the priority of the lien of the Board;
- (c) in payment of the rates and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Board in respect thereof;
- (d) in payment of any charges due to the Board from the importer, owner or consignee of the goods under the provisions of this Act in respect of any other goods belonging to him.

(2) The surplus, if any, shall, except in the case of goods confiscated under any law relating to customs be paid on demand to the importer, owner or consignee of the goods, or to his agents.

64. (1) If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any regulations or orders made in pursuance thereof, refuses or neglects to pay the same or any part thereof on demand, the Board may distrain or arrest such vessel and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Board, together with such further amount as may accrue for any period during which the vessel is under distraint or arrest, is paid.

Recovery of
rates and
charges by
distrain of
vessel.

(2) In case any part of the said rates or penalties, or of the cost of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest has been so made, the Board may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the costs of sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

65. If a Board gives to the officer of the Central Government whose duty it is to grant the port-clearance of any vessel at the port, a notice stating that an amount therein specified is due in respect of rates, fines, penalties or expenses chargeable under this Act or under any regulations or orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessel, such officer shall not grant such port-clearance until the amount so chargeable or due has been paid.

Grant of
port-clea-
rance after
payment of
rates.

CHAPTER VII

BORROWING POWERS OF BOARD

Power to
raise loans.

66. (1) A Board may, with the previous sanction of the Central Government and after due notification in the Official Gazette, raise loans for the purposes of this Act:

5

Provided that no such notification shall be necessary if a loan is obtained from the Central Government or a State Government.

(2) Loans may be raised by a Board in the open market on Port Trust securities issued by it or may be obtained from the Central Government or a State Government.

10

(3) The terms of all loans shall be subject to the approval of the Central Government.

Port Trust
securities.

67. (1) A Board may, with the sanction of the Central Government, prescribe the form in which Port Trust securities shall be issued by it and the mode in which and the conditions subject to which they may be transferred.

15

(2) The holder of any Port Trust security in any form may obtain in exchange therefor, upon such terms as the Board may from time to time determine, a Port Trust security in any other form prescribed by regulations under this Act.

20

(3) The right to sue in respect of moneys secured by Port Trust securities shall be exercisable by the holders thereof for the time being without preference in respect of priority of date.

Right of
survivors of
joint or
several
payees of
securities.

68. (1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872—

25 9 of 1872.

(a) when any Port Trust security is payable to two or more persons jointly, and either or any of them dies, the Port Trust security shall be payable to the survivor or survivors of those persons, and

(b) when any such security is payable to two or more persons severally and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, or to the representatives of the deceased, or to any of them.

30

(2) This section shall apply whether such death occurred or occurs before or after the appointed day.

35

(3) Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor

or survivors under or in respect of any security to which sub-section (1) applies.

1 of 1956.
2 of 1912.

(4) For the purposes of this section, a body incorporated under the Companies Act, 1956, or the Co-operative Societies Act, 1912 or any other enactment for the time being in force, whether within or without India, shall be deemed to die when it is dissolved.

69. Where two or more persons are joint holders of any Port Trust security, any one of those persons may give an effectual receipt for any interest payable in respect of such security unless notice to the contrary has been given to the Board by any other of the holders.

Power of one or two or more joint holders to grant receipts.

26 of 1881.

70. Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881, no indorsement of a Port Trust security, which is transferable by endorsement, shall be valid unless made by the signature of the holder inscribed on the back of the security itself.

Indorsements to be made on security itself.

26 of 1881.

71. Notwithstanding anything in the Negotiable Instruments Act, 1881, a person shall not by reason only of his having indorsed any Port Trust security be liable to pay any money due, either as principal or as interest, thereunder.

Indorser of security not liable for amount thereof.

72. (1) The signature of the person authorised to sign Port Trust securities on behalf of the Board may be printed, engraved or lithographed or impressed by such other mechanical process, as the Board may direct, on such securities.

Impression of signature on securities.

(2) A signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if it had been inscribed in the proper handwriting of the person so authorised.

73. (1) When any Port Trust security is alleged to have been lost, stolen or destroyed either wholly or in part, and a person claims to be the person to whom but for the loss, theft or destruction it would be payable, he may, on application to the Board and on producing proof to its satisfaction of the loss, theft or destruction and of the justice of the claim and on payment of such fee, if any, as may be prescribed by regulations, obtain from the Board an order for—

Issue of duplicate securities.

(a) the payment of interest in respect of the security said to be lost, stolen or destroyed, pending the issue of a duplicate security; and

(b) the issue of a duplicate security payable to the applicant.

(2) An order shall not be passed under sub-section (1) until after the issue by the Board of the prescribed notification of the loss, theft or destruction.

(3) A list of the securities in respect of which an order is passed under sub-section (1) shall be published in such manner as the Board may prescribe. 5

(4) If at any time before the Board becomes discharged under the provisions of this Act from liability in respect of any security the whole of which is alleged to have been lost, stolen or destroyed, such security is found, any order passed in respect thereof under this section shall be cancelled. 10

Issue of converted etc., securities.

74. (1) A Board may, subject to such conditions as it may prescribe, on the application of a person claiming to be entitled to a Port Trust security or securities issued by it, on being satisfied of the justice of the claim and on delivery of the security or securities 15 receipted in such manner and on payment of such fee, if any, as it may prescribe, convert, consolidate or sub-divide the security or securities, and issue to the applicant a new security or securities accordingly.

(2) The conversion, consolidation or sub-division referred to in sub-section (1) may be into a security or securities of the same or different classes or of the same or different loans. 20

Discharge certain cases.

75. Notwithstanding anything contained in the Indian Limitation Act, 1908—

9 of 1908.

(i) on payment of the amount due on a Port Trust security 25 on or after the date on which payment becomes due, or

(ii) when a duplicate security has been issued under section 73, or

(iii) when a new security or securities has or have been issued upon conversion, consolidation or sub-division under 30 section 74,

the Board shall be discharged from all liability in respect of the security or securities so paid or in place of which a duplicate or new security or securities has or have been issued—

(a) in the case of payment—after the lapse of six years 35 from the date on which payment was due;

(b) in the case of a duplicate security—after the lapse of six years from the date of the publication under sub-section (3) of section 73 of the list in which the security is first mentioned or from the date of the last payment of interest on the original 40 security, whichever date is later;

(c) in the case of a new security issued upon conversion, consolidation or sub-division—after the lapse of six years from the date of the issue thereof.

76. A board may, from time to time, make regulations to provide
5 for all or any of the following matters, namely:—

Power
Board
make regula-
tions.

(a) the person, if any, authorised to sign, and the mode of affixing the corporate seal and of attestation of documents relating to Port Trust securities issued or to be issued by the Board;

10 (b) the manner in which payment of interest in respect of such Port Trust securities is to be made, recorded and acknowledged;

(c) the circumstances and the manner in which such Port Trust securities may be renewed;

15 (d) the circumstances in which such securities must be renewed before further payment of interest thereon can be claimed;

(e) the form in which such securities delivered for renewal, conversion, consolidation or sub-division are to be receipted;

20 (f) the proof which is to be produced by a person applying for duplicate securities;

(g) the form and manner of publication of the notification mentioned in sub-section (2) of section 73 and the manner of publication of the list mentioned in sub-section (3) of that
25 section;

(h) the nature and amount of indemnity to be given by a person applying for the payment of interest on Port Trust securities alleged to have been wholly or partly lost, stolen or destroyed, or for the issue of duplicate Port Trust securities;

30 (i) the conditions subject to which Port Trust securities may be converted, consolidated or sub-divided;

(j) the amounts for which stock certificate may be issued;

(k) generally, all matters connected with the grant of duplicate, renewed, converted, consolidated and sub-divided securities;
35

(l) the fees to be paid in respect of the issue of duplicate securities and of the renewal, conversion, consolidation and sub-division of Port Trust securities;

40 (m) the fees to be levied in respect of the issue of stock certificates.

Place and currency of loans raised by Board. 77. All loans contracted by a Board under this Act shall be raised in India, and in Indian currency, unless the Central Government, by notification in the Official Gazette, otherwise directs.

Security for loans taken out by Board. 78. All loans raised by a Board under this Act shall be a first charge on— 5

(a) the property vested, or which may hereafter during the currency of the loans become vested, in the Board other than any sum set apart by the Board as the sinking fund for the purpose of paying off any loan; and

(b) the rates leviable by the Board under this Act. 10

Remedies of Government in respect of loans made to Boards. 79. (1) The Central Government or a State Government shall have in respect of loans made by it to a Board, or of loans made to any other authority for the repayment of which the Board is legally liable the same remedies as holders of Port Trust securities issued by the Board; and such Government shall not be deemed to 15 possess any prior or greater rights in respect of such loans than holders of such Port Trust securities:

Provided that where the terms of any such loan made before the appointed day expressly provide that the loan shall have priority over all other loans in the matter of repayment by the Board, such 20 loan shall have priority.

Power of Board to repay loans before date. 80. A board may, with the previous sanction of the Central Government, apply any sums, out of moneys which may come into its hands under the provisions of this Act and which can be so applied without prejudicing the security of the other holders of 25 Port Trust securities, in repaying to the Government any sum which may remain due to it in respect of the principal of any loan although the time fixed for the repayment of the same may not have arrived:

Provided that no such repayment shall be made of any sum 30 less than ten thousand rupees; and that, if such repayment is made, the amount of interest in each succeeding instalment shall be so adjusted as to represent exactly the interest due on the outstanding principal.

Establishment of sinking fund. 81. (1) In respect of every loan raised by a Board under this Act, 35 which is not repayable before the expiration of one year from the date of the loan, the Board shall set apart half-yearly out of its income as a sinking fund a sum sufficient to liquidate the loan within a period which shall not in any case, unless the previous consent of the Central Government has been obtained, exceed thirty 40

years; but the maximum period shall not in any case exceed sixty years:

Provided that a sinking fund need not in the absence of any stipulation to that effect be established in the case of loans taken by
5 the Board from the Central Government or any State Government.

(2) Where any sinking fund has, before the appointed day, been established by any authority in respect of a loan raised by it for which loan the Board is liable under this Act, the sinking fund so established by that authority shall be deemed to have been establish-
10 ed by the Board under this section.

82. (1) The sums so set apart by a Board under sub-section (1) of
section 81 and the sums forming part of any sinking fund referred to
in sub-section (2) of that section shall be invested in public securities
or in such other securities as the Central Government may approve
15 in this behalf, and shall be held in trust for the purposes of this Act
by two Trustees, one being the Board and the other a person ap-
pointed by the Central Government.

Investment
and applica-
tion of sin-
king fund.

(2) A Board may apply the whole or any part of the sums accu-
mulated in any sinking fund in or towards the discharge of the
20 moneys for the repayment of which the fund has been established:

Provided that it pays into the fund in each year, and accumulates
until the whole of the moneys borrowed are discharged, a sum
equivalent to the interest which would have been produced by the
sinking fund, or the part of the sinking fund so applied.

25 83. (1) A sinking fund established for the liquidation of any loan
shall be subject to annual examination by such person as may be
appointed by the Central Government in this behalf, and the person
so appointed shall ascertain whether the cash and the current
market value of the securities at the credit of the fund are actually
30 equal to the amount which would have been accumulated had in-
vestments been regularly made and had the rate of interest as origi-
nally estimated been obtained thereon.

Examination
of sinking
fund.

(2) A Board shall pay forthwith into the sinking fund any
amount which the person appointed under sub-section (1) to conduct
35 the annual examination of the fund may certify to be deficient,
unless the Central Government specifically sanctions a gradual read-
justment.

(3) If the cash and the current market value of the securities at
the credit of a sinking fund are in excess of the amount which
40 should be at its credit, the person appointed under sub-section (1)

shall certify the amount of this excess, and the Board may, with the previous sanction of the Central Government,—

(a) withdraw the whole or any part of the certified excess in which case the Trustees in whose names the sinking fund is invested under sub-section (1) of section 82, shall forthwith transfer securities of the requisite current market value, or cash and securities of the requisite current market value, to the Board, or

(b) reduce or discontinue the half-yearly contributions to the sinking fund required under section 81, or 10

(c) adopt a combination of these measures.

Power of Board to raise loans on short-term bills.

84. Nothing contained in this Act shall be deemed to affect the power of the Board to raise loans under the Local Authorities Loans Act, 1914.

9 of 1914.

Power of Board to take temporary loans or overdrafts.

85. Notwithstanding anything contained in this Act, a Board may borrow moneys by means of temporary overdraft or otherwise by pledging the securities held by the Board in its reserve funds or on the security of the fixed deposits of the Board in its banks:

Provided that such temporary overdrafts or other loans—

(a) shall not at any time have a longer currency than six months; and

(b) shall not be taken, without the previous sanction of the Central Government, if at any time in any year the amount of such overdrafts or other loans exceeds such amount not exceeding ten lakhs of rupees, as the Central Government may fix in this behalf:

Provided further, that all moneys so borrowed by temporary overdrafts or otherwise shall be expended for the purposes of this Act.

Power of Board to borrow money from the International Bank for Reconstruction and Development or other foreign institutions.

86. Notwithstanding anything contained in this Act or any other law for the time being in force, a Board may, with the previous sanction of the Central Government and on such terms and conditions as may be approved by that Government, raise for the purposes of this Act loans in any currency or currencies from the International Bank for Reconstruction and Development or from any other bank or institution in any country outside India; and no other provision of this Chapter shall apply to or in relation to any such loan unless the terms and conditions of the loan or the approval thereof by the Central Government otherwise provide. 30 35

CHAPTER VIII

REVENUE AND EXPENDITURE

15 of 1908. 87. All moneys received by or on behalf of a Board under the provisions of this Act, and all moneys received by it as the Conservator of the port and of the port approaches or as the body appointed under sub-section (1) of section 36 of the Indian Ports Act excluding all fees and all fines and penalties creditable to the pilotage account of the port under sub-section (5a) of that section, shall be credited to a fund called the general account of the port.

10 88. (1) The moneys credited to the general account under section 87, shall, subject to the provisions of section 89 of this Act and of section 36 of the Indian Ports Act, be applied by the Board in payment of the following charges, namely:—

15 (a) the interest and instalments of principal due in respect of any loan that may have been raised or obtained by the Board or for the repayment of which the Board may be liable, and payments to the sinking fund established for such loan;

(b) the salaries, fees, allowances, pensions, gratuities, compassionate allowances or other moneys due to—

20 (i) the Chairman, Deputy Chairman and other Trustees;

(ii) the employees of the Board; and

(iii) the surviving relatives, if any, of such employees;

25 (c) the contributions, if any, payable to the Central Government or any State Government on account of the pension and leave allowance of any officer lent to the Board by such Government;

30 (d) the cost and expenses, if any, incurred by the Board in the conduct and administration of any provident or welfare fund or loan or special fund established by the Board;

(e) the contributions, if any, duly authorised to be made by regulations made under this Act to any such fund as is referred to in clause (d);

35 (f) any charges for which the Board may be liable under section 108 or section 109;

(g) such sums as may, from time to time, be agreed upon by the Board and a State Government as a reasonable contribution payable by the Board towards the expenses in connection

with the watch and ward functions of the police force which the State Government may establish and maintain for the protection of the port and the docks, warehouses and other property of the Board;

(h) the cost of repairs and maintenance of the property belonging to or vested in the Board and all charges upon the same and all working expenses; 5

(i) the cost of the execution and provision of any new work or appliance specified in section 35 which the Board may determine to charge to revenue; 10

(j) any expenditure incurred under section 36;

(k) any other expenditure which may be incurred by the Board generally for the purposes of this Act;

(l) any other charge which may on the application of the Board be specially sanctioned by the Central Government or for which the Board may be legally liable. 15

(2) All moneys standing at the credit of the Board which cannot immediately be applied in the manner or for the purposes specified in sub-section (1) shall—

(a) be deposited in the State Bank of India or in such scheduled bank or banks, and subject to such conditions as may, from time to time, be specified by the Central Government; or 20

(b) be invested in public securities or in such other securities as the Central Government may approve in this behalf; and the said securities shall be held in trust by the Board for the purposes of this Act. 25

Power to transfer moneys from the general account to the pilotage account and vice versa.

89. A Board may, with the previous sanction of the Central Government, apply any sum out of the moneys credited to the general account of the port towards meeting deficits, if any, in the pilotage account of the port maintained under section 36 of the Indian Ports Act or transfer the whole or part of any surplus funds in such pilotage account to the general account of the port. 30

Establishment of reserve funds.

90. (1) A Board may, from time to time, set apart such sums out of its surplus income as it thinks fit, as a reserve fund or funds for the purpose of expanding existing facilities or creating new facilities at the port or for the purposes of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement or for meeting expenditure arising from loss or damage from fire, cyclones, shipwreck or other accident or for any other emergency arising in the ordinary conduct of its work under this Act: 35 40

Provided that the sums set apart annually in respect of, and the aggregate at any time of, any such reserve fund or funds shall not exceed such amounts as may, from time to time, be fixed in that behalf by the Central Government.

- 5 (2) Any such reserve fund or funds may be invested in public securities or in such other securities as the Central Government may approve in this behalf.

91. (1) For the purposes of any investment which a Board is authorised to make by this Act, it shall be lawful for every Board 10 to reserve and set apart any securities to be issued by it on account of any loan to which the consent of the Central Government has been given, provided that the intention to so reserve and set apart such securities has been notified as a condition to the issue of the loan.

Power to reserve Port Trust securities for Board's own investments.

- 15 (2) The issue by any Board of any such securities direct to and in the name of the Board shall not operate to extinguish or cancel such securities, but every security so issued shall be valid in all respects as if issued to, and in the name of, any other person.

20 (3) The purchase by a Board, or the transfer, assignment or indorsement to a Board or to the Trustees of the sinking fund set up by a Board, of any security issued by the Board, shall not operate to extinguish or cancel any such security but the same shall be valid and negotiable in the same manner and to the same extent as if held by, or transferred or assigned or indorsed to, any other person.

- 25 92. (1) No expenditure shall be charged by a Board to capital without the previous sanction of the Central Government:

Prior sanction of Central Government to charge expenditure to capital.

30 Provided that a Board may without such sanction charge to capital expenditure not exceeding such limit as may be specified, and subject to such conditions as may be imposed, by the Central Government.

- (2) Nothing in sub-section (1) shall be deemed to require the further sanction of the Central Government in any case where the actual expenditure incurred as a charge to capital exceeds the expenditure sanctioned in this behalf by the Central Government 35 unless the excess is more than ten per cent. of the expenditure so sanctioned.

93. (1) No new work or appliance, the estimated cost of which exceeds such amount as may be fixed by the Central Government in this behalf, shall be commenced or provided by a Board, nor shall 40 any contract be entered into by a Board in respect of any such new

Working requiring sanction of the Board or the Central Government.

work or appliance until a plan of, and estimate for, such work or appliance has been submitted to, and approved by, the Board; and, in case the estimated cost of any such new work or appliance exceeds such amount as may from time to time, be fixed by the Central Government in this behalf, the sanction of the Central Government to the plan and estimate shall be obtained before such work is commenced or appliance provided. 5

(2) Nothing in sub-section (1) shall be deemed to require the further sanction of the Central Government in any case where the actual expenditure incurred does not exceed by more than ten per cent., the estimated cost so sanctioned. 10

Powers of Chairman as to the execution of works. 94. Notwithstanding anything contained in section 93, the Chairman may direct the execution of any work the cost of which does not exceed such maximum limit as may be fixed by the Central Government in this behalf, and may enter into contracts for the execution of such works but in every such case the Chairman shall, as soon as possible, make a report to the Board of any such directions given or contracts entered into by him. 15

Power of Board to compound or compromise claims. 95. Every Board may compound or compromise any claim or demand or any action or suit instituted by or against it for such sum of money or other compensation as it deems sufficient: 20

Provided that no settlement shall be made under this section without the previous sanction of the Central Government if such settlement involves the payment by the Board of a sum exceeding such amount as may be specified by the Central Government in this behalf. 25

Writing off of losses. 96. (1) Subject to such conditions as may be specified by the Central Government, where a Board is of opinion that any amount due to or any loss, whether of money or of property, incurred by, the Board is irrecoverable, the Board may, with the previous approval of the Central Government, sanction the writing off finally of the said amount or loss: 30

Provided that no such approval of the Central Government shall be necessary where such irrecoverable amount or loss does not exceed, in any individual case, five thousand rupees or in the aggregate in any year, one lakh of rupees. 35

(2) Notwithstanding anything contained in sub-section (1), where the Chairman is of opinion that any amount due to, or any loss, whether of money or of property, incurred by, the Board is irrecoverable, the Chairman may sanction the writing off finally of such amount or loss provided that such amount or loss does not 40

exceed, in any individual case, one thousand rupees or in the aggregate in any one year, twenty thousand rupees; and in every such case the Chairman shall make a report to the Board giving reasons for such sanction.

- 5 **97.** All the powers, authorities and restrictions contained in this Powers, etc. of Board as
Act in respect of the works of a Board by this Act authorised, shall Conservator or Body appointed
apply to the works which may be executed by the Board as the under section 36 of
Conservator of the port or as the body appointed under sub-section the Indian Ports Act.
10 (1) of section 36 of the Indian Ports Act, not being works the cost of which is chargeable to the pilotage account of the port under
sub-section (5b) of that section and also to the sanction of such works, the estimates therefor, and the expenditure thereunder.

- 15 **98. (1)** A Board shall, on or before the thirty-first day of January Budget estimates.
in each year, hold a special meeting at which the Chairman of the Board shall submit an estimate of the income and expenditure of the
Board for the next financial year, in such form as the Central Government may specify.

- 20 (2) A copy of such estimate shall be sent by post or otherwise to each Trustee so as to reach him not less than ten clear days prior to the date appointed for the special meeting referred to in sub-section (1).

- (3) The Board shall consider the estimate at such meeting and may provisionally approve of it with or without modifications.

- 25 (4) The Board shall, on or before the tenth day of February, cause a copy of such estimate as provisionally approved by it, to be sent to the Central Government.

- (5) The Central Government may sanction the estimate or may return it with remarks and may call for such additional information as it may deem necessary.

- 30 (6) When an estimate is returned under sub-section (5), the Board shall proceed to reconsider the estimate with reference to such remarks and shall furnish such additional information as the Central Government may call for and shall, if necessary, modify or alter the estimate and resubmit it to the Central Government.

- 35 (7) The Central Government shall sanction the estimate with or without modifications.

- (8) Where any such estimate is not sanctioned by the Central Government before the commencement of the financial year to which it relates, the Central Government may authorise the Board to incur

such expenditure as may be necessary in the opinion of the Central Government until such time as the approval of the estimate by the Central Government is communicated to the Board.

Preparation of supplemental estimates. 99. A Board may in the course of any year for which an estimate has been sanctioned by the Central Government cause one or more supplemental estimates for the residue of such year to be prepared, and the provisions of section 98 shall, so far as may be, apply to such estimate as if it were an original estimate. 5

Re-appropriation of amounts and estimate. 100. Subject to any directions which the Central Government may give in this behalf, any sum of money or part thereof of which the expenditure has been authorised in an estimate for the time being in force sanctioned by the Central Government and which has not been so spent, may at any time be reappropriated by the Board to meet any excess in any other expenditure authorised in the said estimate: 15

Provided that no such reappropriation shall be made from one major head of expenditure to another such head without the previous sanction of the Central Government.

Adherence to estimate except in emergency. 101. (1) Subject to the provisions of section 100, no sum exceeding such amount as the Central Government may fix in this behalf shall, save in cases of pressing emergency, be expended by, or on behalf of, any Board unless such sum is included in some estimate of the Board at the time in force which has been finally sanctioned by the Central Government. 20

(2) If any sum exceeding such limit as may have been fixed in this behalf under sub-section (1) is so expended by any Board on a pressing emergency, the circumstances shall be forthwith reported by the Chairman to the Central Government, together with an explanation of the way in which it is proposed by the Board to cover such extra expenditure. 25 30

Accounts and audit. 102. (1) A Board shall maintain proper accounts and other relevant records and prepare the annual statement of accounts including the balance-sheet in such form as may be specified by the Central Government in consultation with the Comptroller and Auditor-General of India. 35

(2) The accounts of the Board shall be audited once in every year by the Comptroller and Auditor-General of India or such other persons as may be appointed by him in this behalf and he shall in respect of such audit be paid by the Board such amount as the Central Government may determine and such amount shall be debitable to the general account of the Board. 40

(3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of a Board shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books of accounts, connected vouchers and other documents of the Board.

103. (1) Within fourteen days after the audit and examination of the accounts of a Board have been completed, the Comptroller and Auditor-General of India shall forward copies of the audit report to the Central Government and to the Board.

(2) The Central Government shall cause every audit report to be laid for not less than thirty days before each House of Parliament as soon as may be after such report is received by that Government.

104. Every Board shall forthwith take into consideration any defects or irregularities that may be pointed out by the Comptroller and Auditor-General of India in the audit report on the income and expenditure of the Board and shall pass such orders thereon as the Board may think fit and shall also send a report of the action taken by the Board to the Central Government.

105. If there is a difference of opinion between any Board and the Comptroller and Auditor-General of India on any point included in the audit report, and the Board is unable to accept and implement the recommendations, if any, made by him on such point, the matter shall forthwith be referred to the Central Government which shall pass final orders thereon and the Board shall be bound to give effect to such orders.

CHAPTER IX

30 SUPERVISION AND CONTROL OF CENTRAL GOVERNMENT

106. As soon as may be after the first day of April in every year and not later than such date as may be fixed in this behalf by the Central Government, every Board shall submit to the Central Government a detailed report of the administration of the port during the preceding year ending on the thirty-first day of March, in such form as the Central Government may direct.

Submission
of statements
of income
and expendi-
ture to
Central
Govern-
ment.

107. (1) Every Board shall annually, or oftener if directed by the Central Government so to do, submit statements of its income and expenditure in such form and at such time as that Government may direct.

(2) A copy of all such statements shall be open to the inspection of the public at the office of the Board during office hours on payment of such fee for each inspection as may from time to time be fixed by the Board.

Power of
Central
Government
to order
survey or
examination
of works of
Board.

108. The Central Government may, at any time, order a local survey or examination of any works of a Board, or the intended site thereof and the cost of such survey and examination shall be borne and paid by the Board from and out of the moneys credited to the general account of the port.

109. If, at any time, any Board—

(a) allows any work or appliance constructed or provided by, or vested in, the Board to fall into disrepair; or

(b) does not, within a reasonable time, complete any work commenced by the Board or included in any estimate sanctioned by the Central Government; or

Power of
Central
Government
to restore or
complete
works at the
cost of
Board.

(c) does not, after due notice in writing, proceed to carry out effectually any work or repair or to provide any appliance which is necessary in the opinion of the Central Government for the purposes of this Act,

the Central Government may cause such work to be restored or completed or carried out, or such repairs to be carried out or such appliance to be provided, and the cost of any such restoration, completion, construction, repair or provision shall be paid by the Board from and out of the moneys credited to the general account of the port.

Power of
Central
Government
to supersede
Board.

110. (1) If, at any time, the Central Government is of opinion—

(a) that on account of a grave emergency, any Board is unable to perform the duties imposed on it by or under the provisions of this Act or of any other law, or

(b) that the Board has persistently made default in the performance of the duties imposed upon it by or under the provisions of this Act or of any other law and as a result of such

default, the financial position of the Board or the administration of the port has greatly deteriorated,

the Central Government, may, by notification in the Official Gazette, supersede the Board for such period, not exceeding six months at a time, as may be specified in the notification:

10 Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (b), the Central Government shall give a reasonable time of not less than three months to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

15 (a) all the Trustees shall, as from the date of supersession, vacate their offices as such Trustees;

(b) all the powers and duties which may, by or under the provisions of this Act or of any other law, be exercised or performed by or on behalf of the Board, shall until the Board is reconstituted under clause (b) or clause (c) of sub-section (3) be exercised and performed by such person or persons as the
20 Central Government may direct:

(c) all property vested in the Board shall, until the Board is reconstituted under clause (b) or clause (c) of sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the
25 notification issued under sub-section (1), the Central Government may—

(a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary, or

30 (b) reconstitute the Board by fresh appointment and fresh election, and in such case, any persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for appointment or election, as the case may be, or

35 (c) reconstitute the Board by appointment only for such period as it may consider necessary and in such a case, the persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for such appointment merely because they were Trustees when the Board was superseded:

Provided that the Central Government may, at any time before the expiration of the period of supersession, whether as originally specified under sub-section (1) or as extended under this sub-section, take action under clause (b) or clause (c) of this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest possible opportunity.

Power of
Central
Government
to issue
directions
to Board.

111. (1) Without prejudice to the foregoing provisions of this Chapter, every Board shall, in the discharge of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Board shall be given opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

CHAPTER X

PENALTIES

Persons
employed
under this
Act to be
public ser-
vants for
certain pur-
poses.

112. Every person employed by a Board under this Act, shall, for the purposes of sections 161 to 171 (both inclusive), 184, 185 and 409 of the Indian Penal Code and for the purposes of the Prevention of Corruption Act, 1947 be deemed to be a public servant within the meaning of section 21 of the said Code.

45 of 1860.
2 of 1947.

Penalty for
contraven-
tion of
sections 37,
38, 40 and
41.

113. Whoever contravenes the provisions of any order issued under section 37 or section 38 or section 41 or fails to comply with any condition imposed under section 40 shall be punishable with fine which may extend to one thousand rupees, and where the contravention or failure is a continuing one, with further fine which may extend to one hundred rupees for every day after the first during which such contravention or failure continues.

Penalty for
setting up
wharves,
quays, etc.
without
permission

114. Any person who contravenes the provisions of section 46 shall be punishable with fine which may extend to one thousand rupees for the first contravention, and with a further fine which may extend to one hundred rupees for every day after the first during which the contravention continues.

115. Any person who removes or attempts to remove or abets the removal of, any vessel or goods with the intention of evading payment of the rates lawfully due in respect thereof to any Board, shall be punishable with fine which may extend to twice the amount of the rates so due subject to a minimum of fifty rupees.

Penalty for evading rates, etc.

116. If, through the negligence of any person having the guidance or command of any vessel, or of any of the mariners or persons employed on such vessel, any damage is caused to any dock, wharf, quay, mooring, stage, jetty, pier or other work in the possession of any Board, the amount of such damage shall, on the application of the Board be recoverable, together with the cost of such recovery, by distress and sale, under a Magistrate's warrant, of a sufficient portion of the boats, masts, spares, ropes, cables, anchors or stores belonging to such vessel:

Recovery of value of damage to property of Board.

15 Provided that no Magistrate shall issue such a warrant until the master of the vessel has been duly summoned to appear before him and, if he appears, until he has been heard; and provided also that no such warrant shall issue if the vessel was at the time under the orders of a duly authorised employee of the Board and the damage caused was attributable to the order, act or improper omission of such employee.

117. Any person who contravenes any of the provisions of this Act or of any rule, regulation or order made thereunder, for the contravention of which no penalty is expressly provided thereunder, shall be punishable with fine which may extend to two hundred rupees.

Other offences.

118. No court inferior to that of a magistrate of the first class shall try any offence punishable under this Act or any rule or regulation made thereunder.

Cognizance of offences.

119. (1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

35 Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 5

Explanation.—For the purposes of this section,—

(a) “company” means a body corporate and includes a firm 10 or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER XI

MISCELLANEOUS

15

Limitation
of proceed-
ings in
respect of
things done
under the
Act.

120. No suit or other proceeding shall be commenced against a Board or any employee thereof for anything done, or purporting to have been done, in pursuance of this Act until the expiration of one month after notice in writing has been given to the Board or him stating the cause of action, or after six months after the accrual of the cause of action. 20

Protection of
acts done in
good faith.

121. No suit or other legal proceeding shall lie against a Board or any employee thereof in respect of anything which is in good faith done or intended to be done under this Act or any rule or regulations made thereunder, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to or under the control of the Board. 25

Power of
Cent
Governme
to make
rules.

122. (1) The Central Government may, by notification in the Official Gazette, make rules for all or any of the following purposes, namely:—

30

(a) the procedure to be followed for the transaction of business at the meetings of a Board;

(b) the fees and allowances payable to the members of a Board or of its committees.

(2) The power to make rules under this section is subject to the condition of the rules being made after previous publication. 35

(3) Every rule made under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry 40

of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

123. Without prejudice to any power to make regulations contained elsewhere in this Act, a Board may make regulations consistent with this Act for all or any of the following purposes, namely:—

General powers of Board to make regulations.

- (a) for the procedure to be followed for the transaction of business at the meetings of its committees;
- (b) for the form and manner in which contracts shall be made by the Board;
- 15 (c) for the form of receipt to be given under sub-section (2) of section 42;
- (d) for the period within which notice may be given under sub-section (2) of section 43;
- 20 (e) for the guidance of persons employed by the Board under this Act;
- (f) for the safe and convenient use of the docks, wharves, quays, jetties, sheds, warehouses, railways, tramways and other works constructed by or vested in the Board under this Act;
- 25 (g) for the reception, portorage, storage and removal of goods brought within the premises of the Board, for the exclusive conduct of these operations by the Board or persons employed by the Board; and for declaring the procedure to be followed for taking charge of goods which may have been damaged before landing, or may be alleged to have been so damaged;
- 30 (h) for keeping clean the port, river or basins or the bank of the river and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon;
- (i) for the mode of payment of rates leviable by the Board under this Act;
- 35 (j) for regulating, declaring and defining the docks, wharves, quays, jetties, stages and piers vested in the Board on which goods shall be landed from vessels and shipped on board vessels;

(k) for regulating the manner in which, and the conditions under which, the loading and unloading of all vessels within the port or port approaches shall be carried out;

(l) for regulating the lighterage of cargo between ships or between ships and shore or between shore and ships; 5

(m) for the exclusion from the premises of the Board of disorderly or other undesirable persons and of trespassers;

(n) for ensuring the safety of the port;

(o) generally, for the efficient and proper administration of the port. 10

Provisions
with respect
to regula-
tions.

124. (1) No regulation made under this Act shall have effect until it has been approved by the Central Government and until such approval has been published in the Official Gazette.

(2) No regulation other than a regulation framed under section 28 shall be approved by the Central Government until the same has been published by the Board for two weeks successively in the Official Gazette and until fourteen days have expired from the date on which the same had been first published in that Gazette. 15

(3) Any regulation made under this Act may provide that a breach thereof shall be punishable with fine which may extend to two hundred rupees, and where the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which such breach continues. 20

Power of
Central Gov-
ernment to
direct regu-
lations to be
made or
to make re-
gulations.

125. (1) Whenever the Central Government considers necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct any Board to make any regulations for all or any of the matters specified in section 28 or section 76 or section 123 or to amend any regulations made by the Board, within such period as the Central Government may specify in this behalf. 25 30

(2) If any Board, against whom a direction is issued by the Central Government under sub-section (1), fails or neglects to comply with such direction within the specified period, the Central Government may make the regulations or amend the regulations made by the Board, as the case may be, either in the form specified in the direction or with such modifications thereof as the Central Government may think fit: 35

Provided that before so making or amending the regulations the Central Government shall consider any objection or suggestion made by the Board within the said period. 40

(3) Where in pursuance of sub-section (2), any regulations have been made or amended, the regulations so made or amended shall be published by the Central Government in the Official Gazette and shall thereupon have effect accordingly.

5 126. Notwithstanding anything contained in this Act, the first regulations under this Act shall be made by the Central Government and shall have effect on being published in the Official Gazette. Power of Central Government to make first regulations.

10 127. The text of the regulations made under clauses (e) to (m) of section 123 and the scale of rates together with a statement of conditions framed by any Board under Chapter VI shall be prominently posted by the Board in English, in Hindi and in the regional language on special boards to be maintained for the purpose at the wharves, docks, piers and other convenient places on the premises of the Board. Posting of certain regulations, etc.

15 128. Nothing in this Act shall affect—

(1) the right of the Central Government to collect customs duties or of any municipality to collect town duties at any dock, berth, wharf, quay, stage, jetty or pier in the possession of a Board, or

20 (2) any power or authority vested in the customs authorities under any law for the time being in force. Saving of right of Central Government and municipalities to use wharves, etc., for collecting duties and of power of customs officers.

129. The provisions of sections 35, 37, 38, 39, 40, 41, 42, 48, 49, 50, 64, 65, 115, 121, 123 and 124 shall apply in relation to all aircraft making use of any port while on water as they apply in relation to vessels. Application of certain provisions of the Act to aircraft.

25 130. (1) Notwithstanding anything contained in any other law, if a Board in exercise of the powers conferred on it by regulations made under this Act cancel the allotment of any premises made to any employee of the Board, the Board may, by notice in writing, order such allottee or any other person who may be in occupation 30 of the whole or any part of the premises to vacate them and deliver the same to the Board or a person appointed by the Board in that behalf within such period as may be specified in the notice. Power to evict certain persons from the premises of Board.

Explanation.—For the purposes of this section, “premises” means any building or part of a building and includes—

35 (i) the gardens, grounds and outhouses, if any, appertaining to such building or part of a building;

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof; and

(iii) any furniture, books or other things belonging to the Board and found in such building or part of a building.

(2) If any allottee or other person refuses or fails to comply with 5
an order made under sub-section (1), any magistrate of the first class may, on application made by or on behalf of the Board, order any police officer, with proper assistance, to enter into the premises and evict any person from, and take possession of, the premises and to deliver the same to the Board or a person appointed by the Board 10
in that behalf and the police officer may, for the purpose, use such force as may be necessary.

(3) Any such notice as is referred to in sub-section (1) may be served—

(a) by delivering or tendering it to the allottee or any other 15
person who may be in occupation of the whole or any part of the premises, or

(b) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the pre-
mises, or

20

(c) by registered post.

Alternative
remedy by
suit.

131. Without prejudice to any other action that may be taken under this Act, a Board may recover by suit any rates, damages, expenses, costs, or in the case of sale the balance thereof, when the proceeds of sale are insufficient, or any penalties payable to, or 25
recoverable by, the Board under this Act or under any regulations made in pursuance thereof.

Require-
ments as to
publication
of notifica-
tions,
orders, etc.,
in the
Official
Gazette.

132. (1) Any requirement in this Act that a notification, order, rule or regulation issued or made by a Board or by the Central Gov-
ernment shall be published in the Official Gazette, shall, unless other- 30
wise expressly provided in this Act, be construed as a requirement that the notification, order, rule or regulation shall—

(a) where it is issued or made by the Board, be published in the Official Gazette of the State in which the port is situated,
and

35

(b) where it is issued or made by the Central Government, be published in the Gazette of India.

(2) Any notification, order, rule or regulation issued or made by the Central Government shall, for general information, be also republished in the Official Gazette of the State in which the port is situated.

Bombay Act
7 of 1882. 5 133. (1) On the application of this Act to the port of Kandla, the Repeal.
Bombay Landing and Wharfage Fees Act, 1882 shall cease to have
force in relation to that port.

Madras Act
3 of 1885. 10 (2) On the application of this Act to the ports of Cochin and
Vishakhapatnam, the Madras Outports Landing and Shipping Fees
Act, 1885 shall cease to have force in relation to those ports.

(3) If immediately before the application of this Act to any other
port, there is in force in that port any law which corresponds to this
Act or to any provision thereof, that corresponding law shall, on such
application, cease to have force in relation to that port.

15 134. If any difficulty arises in giving effect to the provisions of Power to
this Act, particularly in relation to the transition from the enact- remove
ments repealed by this Act to the provisions of this Act, the Central difficulties.
Government may, by general or special order, do anything not incon-
sistent with such provisions which appears to it to be necessary or
20 expedient for the purpose of removing the difficulty.

STATEMENT OF OBJECTS AND REASONS

At present, there are six major ports in the country, namely, Calcutta, Bombay, Madras, Vishakhapatnam, Cochin and Kandla. The first three ports are administered by Port Trusts while the other three are administered direct by the Government of India.

2. The Port Trusts at the three major ports of Calcutta, Bombay and Madras are statutory bodies. They consist of a Chairman (and a Deputy Chairman at Calcutta) appointed by the Central Government, elected representatives of commercial, shipping and trade interests, representatives of Central Government Departments concerned with the working of the port, i.e. Customs, Defence and Railways, representatives of the State Government and the local municipal Corporations or Municipalities concerned and the representatives of labour employed in the port. The Port Trusts administer the ports subject to the control of the Central Government in respect of certain specified matters only, for example, creation of, and appointment to, certain senior posts, acquisition and sale of immovable property, fixation of rates and charges, floating loans, annual budgets etc.

3. The remaining three major ports of Vishakhapatnam, Cochin and Kandla are under the immediate charge of a Port Administrative Officer appointed by the Central Government who has been vested with powers similar to those of a Head of a Department. These powers are limited in nature and the Port Administrative Officer has, therefore, to obtain the orders of the Central Government on many matters which would normally be disposed of at local level in the Port Trusts. Commercial and trade interests, especially at Vishakhapatnam and Cochin, have also been agitating for some time that they should have a direct voice in the administration of those ports.

4. In the circumstances and in view of the fact that statutory Port Trusts have successfully administered the three older ports of Calcutta, Bombay and Madras for many years, it is proposed to constitute Port Trusts at Vishakhapatnam, Cochin and Kandla also

Provision has also been made for the extension of the Act, by notification, to any other port which may be declared as a major port in future.

The Bill seeks to give effect to these proposals.

Notes on clauses explain in detail the various provisions of the Bill.

NEW DELHI;
The 18th November, 1962.

JAGJIVAN RAM.

Notes on Clauses

Clause 1.—On the commencement of the Act, it will apply to the major ports of Cochin, Kandla and Vishakhapatnam. The clause also empowers the Central Government to apply the Act to any other major port (other than Bombay, Calcutta and Madras).

Clause 2 contains definitions of the various expressions occurring in the Bill. The definitions generally follow the pattern of those adopted in section 3 of the Calcutta Port Act, 1890, section 3 of the Bombay Port Trust Act, 1879 and section 5 of the Madras Port Trust Act, 1905, with some modifications in the light of the experience gained in the working of the existing Acts.

Clause 3 deals with the constitution of a Board of Trustees of each major port. The provisions of this clause correspond to sections 4, 5 and 6 of the Calcutta and Bombay Acts and sections 7, 8 and 9 of the Madras Act except that there is a slight increase in the total number of Trustees of the Board.

Clause 4 seeks to empower the Central Government to constitute, as an interim measure, the first Board of Trustees for a major port upon the extension of the Act to that port, pending the completion of the necessary arrangements for the constitution of a regular Board of Trustees as provided for in clause 3. The composition of the first Board will be the same as that of the regular Board under clause 3, but all the members will be appointed by the Central Government.

Clause 5 corresponds to sections 4 and 55 of the Calcutta Act, sections 4 and 26 of the Bombay Act and sections 6 and 32 of the Madras Act.

Clause 6 corresponds to section 17 of the Calcutta Act, section 14 of the Bombay Act and section 10(1) of the Madras Act.

Clause 7 follows the provisions of section 10 of the Calcutta Act, sections 9 and 11 of the Bombay Act and section 11 of the Madras Act: a provision has, however, been added that the term of office of a Trustee elected to represent any body of persons would automatically come to an end as soon as he ceases to represent that body.

Clause 8 corresponds in substance to sections 10A and 17(2) of the Calcutta Act, sections 11A and 14A of the Bombay Act and sections 11A and 10(2) of the Madras Act.

Clause 9 corresponds to section 12 of the Bombay and Madras Acts.

Clause 10 generally corresponds to sections 14 and 16 of the Calcutta Act, section 10 of the Bombay Act and section 11B of the Madras Act.

Clause 11 is identical with section 16A(1) of the Calcutta Act and section 13A(1) of the Bombay and Madras Acts.

Clause 12 corresponds to sections 7 and 16A(2) of the Calcutta Act, sections 6(4) and 13A(2) of the Bombay Act and sections 13A(2) and 18 of the Madras Act.

Clause 13 corresponds to the proviso to sections 16 and 16A (3) of the Calcutta Act, sections 13(2) and 13A(3) of the Bombay Act and section 13A(3) and the proviso to section 13 of the Madras Act.

Clause 14 generally corresponds to section 12 of the Calcutta Act, section 20 of the Bombay Act, and section 19 of the Madras Act. A new provision has been added in the Bill empowering the Central Government to appoint a person in place of a Chairman or Deputy Chairman while on deputation outside India. It will also enable the Chairman or Deputy Chairman, while on such deputation, to exercise his powers under the Act to the extent directed by the Central Government.

Clause 15 corresponds to section 11 of the Calcutta Act, section 15(1) of the Bombay Act and section 21 of the Madras Act.

Clauses 16 and 17.—The existing Acts themselves set out in detail the procedure for the transaction of business at a meeting of the Board and of its Committees. As such matters are matters of procedure, it is proposed to leave them to be regulated by rules or regulations, as the case may be. (See sections 29 and 40 to 45 of the Calcutta Act, section 16 of the Bombay Act and section 23 of the Madras Act).

Clauses 18 to 20 and 22 generally correspond to sections 11(3), 17A, 28, 42(1), and 46 of the Calcutta Act, sections 15(2), 14B, 16(7) and 19 of the Bombay Act and sections 22, 23A, 24, 112 and 26(2) of the Madras Act.

Clause 21.—Sections 47 and 47A of the Calcutta Act and section 25 of the Madras Act envisage delegation of powers to the Chairman

to the extent prescribed in those Acts. Clause 21 is wider in scope and enables such delegation being made to the Chairman, Deputy Chairman or any other officer in order to facilitate more efficient administration.

Clauses 23 to 28 correspond to sections 30, 31, 32 and 34 of the Calcutta Act, sections 21, 22, 23 and 24 of the Bombay Act and sections 27 to 30 of the Madras Act.

The important differences, however, are:—

(i) the distinction between the scheduled and non-scheduled staff in the existing Acts has been done away with.

(ii) in the existing Acts, where the appointment relates to a post the maximum pay scale of which is below one thousand rupees, the appointment can be made by the Chairman, but if it is over rupees one thousand, the appointment requires the sanction of the Central Government. The Bill, however, would enable the Central Government to exceed the limit of one thousand rupees so that the Chairman can make the appointments in a larger number of cases. Further, the sanction of the Central Government will not be required for higher appointments except in the case of heads of départements.

Clauses 29 to 31 are new clauses for which there are no corresponding provisions in the existing Acts. They provide for the transfer of assets and liabilities of the Central Government or other authority responsible for the administration of the ports concerned to the Port Trust Boards on the application of the Act to those ports.

Provision has also been made for the continuance of the existing rates until they are altered by the Board. It has also been provided that the capital expenditure that might have been incurred by the Government prior to the application of this Act to any port would form the Capital debt of the Port Trust Board for that port, to be repaid to that Government.

Clause 32 corresponds to section 58 of the Calcutta Act, section 27 of the Bombay Act and section 33 of the Madras Act.

Clause 33 corresponds to section 48 of the Calcutta Act, section 16A of the Bombay Act and section 87 of the Madras Act.

Clause 34 corresponds to section 53 of the Calcutta Act, section 17 of the Bombay Act and section 88 of the Madras Act.

Under the existing Acts, contracts beyond a certain limit have to be executed on behalf of the Board by the Chairman and two other trustees. It is felt that, the Chairman being the Chief Executive Officer, it is not necessary for two other trustees to sign the contract also.

Clause 35 corresponds to sections 49 and 35 of the Calcutta Act, section 68 of the Bombay Act and sections 35 and 36 of the Madras Act.

Clause 36 is a new provision empowering the Port Trust Boards to undertake works on behalf of other authorities.

Clauses 37 to 41.—These correspond to sections 92, 93, 95, 100, 101, 102 and 97 of the Calcutta Act.

Clause 42 corresponds to sections 90 and 91 of the Calcutta Act and section 39 of the Madras Act.

Clause 43 is similar to sections 112(1) and 113 of the Calcutta Act, sections 61A and 61B of the Bombay Act and section 40 of the Madras Act,

except that the period of notice of loss, damage, etc. has been left to be prescribed by the respective Port Trust Boards.

Clauses 44 and 45 correspond to sections 87 and 88 of the Calcutta Act and section 70 of the Bombay Act.

Clause 46 corresponds to sections 83 and 84 of the Calcutta Act, section 81 of the Bombay Act and section 104 of the Madras Act.

Clause 47 corresponds to section 85 of the Calcutta Act. Under that Act, where any private wharf, etc. was erected lawfully but the use thereof is subsequently declared unlawful, the party concerned has to go to the court for award of compensation. The Bill provides for the settlement of compensation by agreement and, failing which, for reference of the dispute to an arbitrator. Provision has also been made for an appeal against the award of the arbitrator.

Clauses 48 and 49 correspond to sections 103, 104, 104A, 105 and 105A of the Calcutta Act, sections 43, 43A and 45 of the Bombay Act and sections 42 and 43 of the Madras Act.

Clause 50 is on the lines of section 43A of the Madras Act.

Clause 51 is similar to section 107(1a) of the Calcutta Act, section 43C of the Bombay Act and section 43B of the Madras Act. The proviso is an addition.

Clauses 52 to 54 correspond to sections 107(1), 109 and 109A of the Calcutta Act, section 43B of the Bombay Act and section 44 of the Madras Act.

Clause 65 corresponds to section 44A of the Madras Act.

Clause 56 is new clause enabling the Port Trust Boards to recover charges shortlevied or erroneously refunded, from the parties concerned.

Clause 57 corresponds to section 56 of the Calcutta Act and section 47 of the Madras Act.

Clauses 58 to 65 correspond to sections 111, 116(1), 113(2), 117, 118, 119, 119A, 120, 121, and 122 of the Calcutta Act, sections 61, 62, 63, 64, 64A, 65, 66 and 67 of the Bombay Act and sections 50 to 61 of the Madras Act. Some new provisions have, however, been included in the Bill. For instance, clauses 61(4) and 62(4) provide for the disposal of arms, ammunition and controlled goods in such manner as the Central Government may direct; this has been provided to remove certain practical difficulties experienced by the Port administrations in the disposal of such goods. It has also been proposed that the surplus of any sale proceeds should be paid on demand to the importer, owner or consignee of the goods or his agents only in cases where the goods have not been confiscated under any law relating to customs.

Clauses 66 to 86 correspond to the following provisions of the existing Acts:—

sections 18-27L of the Calcutta Act,
sections 39-42L of the Bombay Act, and
sections 63-73 of the Madras Act.

Clauses 87 to 91 correspond to sections 123(1), 24B and 24C of the Calcutta Act, sections 48, 49, 60A, 49A, 51, 51A and 72A of the Bombay Act and sections 49, 74, 74A, 74B, 74C of the Madras Act.

The only notable variation is to be found in clause 90(1) under which the Port Trust Board will be enabled to establish a Development Fund also for the purposes of expanding existing facilities or creating new facilities at the port.

Clauses 92 to 97 correspond to the following provisions of the existing Port Trust Acts:

Calcutta Act: sections 75A, 49, 51, 50, 52, 75B, 123(2).
Bombay Act: sections 56A, 68A, 18, 56B and 72A(2)
Madras Act: sections 75, 76, 76A, 89, 89A and 38A.

Under the existing Acts, no expenditure can be charged to capital without the prior sanction of the Central Government. However, under clause 92(1) of the Bill, it is proposed to fix a limit upto which Capital expenditure can be sanctioned by the Board without the sanction of the Central Government, in order to eliminate references to Government in respect of minor works.

In respect of other matters such as works requiring the sanction of the Board or the Central Government, powers of the Chairman relating to the execution of works, power of Board to compound or compromise claims, it is proposed to fix a higher limit than provided for in the existing Acts. It is also proposed to enhance the powers of the Board and the Chairman to write-off losses.

The above proposals aim at facilitating quicker and better working of the day-to-day administration of the port and are in accord with the accepted policy of Government to decentralise powers to the extent possible.

Clauses 98 to 101 correspond to sections 69 to 74 of the Calcutta Act, sections 52 to 56 of the Bombay Act and sections 82 to 86C of the Madras Act.

A new provision has, however, been made in clause 98(8), to enable the Central Government to sanction "on account" expenditure in cases where an estimate cannot be sanctioned by the Central Government before the commencement of the financial year to which it relates.

Clauses 102 to 105.—Similar provisions exist in sections 76 to 78 of the Calcutta Act, sections 58 and 58A of the Bombay Act and sections 79, 80, 80A and 81 of the Madras Act.

The existing Acts do not require the audit reports on the accounts of the Port Trusts being laid before Parliament. Such requirement has, however, been included in the Bill, in pursuance of a recommendation of the Public Accounts Committee.

Clauses 106 to 110 are similar in substance to sections 134B, 80A, 36, 37 and 38 of the Calcutta Act, sections 89, 58B, 68B, 68C and 90 of the Bombay Act and sections 111B, 86B, 37, 38 and 113 of the Madras Act.

Clause 111 is a new provision, enabling the Central Government to issue directions to Port Trust Boards on matters of policy. It has been provided that the Board shall be given an opportunity to express its views before any direction is given under this clause.

Clauses 112 to 118 correspond to sections 136, 94, 127, 96, 99, 83, 84 and 89 of the Calcutta Act; sections 79, 81, 83, 84 and 85 of the Bombay Act and sections 101, 104, 106, 107 and 108 of the Madras Act.

The penalties have, however, been enhanced in some cases because the existing penalties which were fixed years back are considered too low.

Clause 119 deals with offences by companies and has been added on the lines of similar provisions in other Acts.

Clauses 120 and 121 correspond to sections 142 and 135 of the Calcutta Act, section 87 of the Bombay Act and sections 110 and 111 of the Madras Act.

Clause 122 is self-explanatory.

Clause 123 corresponds to section 126(1) of the Calcutta Act, section 73 of the Bombay Act and section 95 of the Madras Act.

Clause 124 is similar in substance to sections 126(3) and 126(4) of the Calcutta Act, section 74 of the Bombay Act and section 96 of the Madras Act.

Clause 125.—This is a new provision enabling the Central Government to direct any Board to make new regulations or to amend any regulations made by the Board within such period as the Central Government may specify. It also empowers the Central Government to make or amend the regulations themselves in the event of failure or non-compliance by the Board of the directions issued by the Central Government in this behalf.

Clause 126 enables the Central Government to frame the first regulations so that the administration of the port could be carried on in accordance with those regulations until such time as new regulations are framed, if necessary, by the Board in accordance with the procedure laid down in the Act.

Clause 127 corresponds to section 128 of the Calcutta Act, section 76 of the Bombay Act and section 98 of the Madras Act.

Clause 128 corresponds to section 69 of the Bombay Act and section 109 of the Madras Act.

Clause 129 is similar to section 143 of the Calcutta Act, section 86A of the Bombay Act and section 109A of the Madras Act.

Clause 130 is similar to section 136A of the Calcutta Act, section 88 of the Bombay Act and section 111A of the Madras Act.

Clause 131 corresponds to section 122D of the Calcutta Act, section 67A of the Bombay Act and section 62 of the Madras Act.

Clause 132 is similar in substance to section 3A of the Calcutta and Bombay Acts and section 5A of the Madras Act.

Clause 133 repeals certain existing enactments.

Clause 134.—This is the usual provision regarding the removal of difficulties in giving effect to the provisions of the new law.

FINANCIAL MEMORANDUM

Clause 29 of the Bill seeks to transfer all the property, assets and funds vested in the Central Government for the purposes of the ports, before the commencement of the Act, to the respective Port Trust Boards to be constituted thereunder. As on 31st March, 1962 the amounts in the funds standing to the credit of the three ports are shown below:—

Vishakhapatnam	Rs. 2.32 Crores.
Cochin	Rs. 1.32 Crores.
Kandla	Rs. 1.50 Crores.

2. The capital expenditure incurred by the Government for the ports of Vishakhapatnam, Cochin and Kandla upto 31st March, 1962, amount to Rs. 8.79 Crores, 3.36 Crores and 16.7 Crores respectively. Clauses 31 and 88 of the Bill provide for the repayment by the Port Trusts of the above capital expenditure together with interest thereon to Government. At the same time, Government loans will not have any precedence over the holders of Port Trust securities which might be issued by the Boards unless the terms of any such loan so stipulate (Clause 79 of the Bill).

3. After the Port Trusts come into being, it may be necessary for the Central Government to advance loans to them to finance approved schemes involving capital outlay. It is not possible to indicate at present the amounts of the loans that may be so advanced. Proposals for such loans will be submitted to Parliament in the normal course as Budget demands.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 122 gives powers to the Central Government to make rules for the procedure to be followed for the transaction of business at the meetings of a Port Trust Board and the fees and allowances payable to the members of the Board or of its committees.

2. Clauses 28, 76 and 123 confer on a Board the power to make regulations for the day-to-day administration of the port in respect of matters specified in those clauses. Such matters, *inter alia*, relate to the procedure to be followed for the transaction of business at the meetings of committees constituted by the Board, the terms and conditions of service of employees of the Board, the form and manner in which contracts shall be made by the Board, the port trust securities, the mode of payment of rates leviable by the Board and the safety of the port.

3. The rules and regulations that may be made would relate to matters which are of a procedural or administrative character.

The delegation of legislative power is thus of a normal character.

*BILL No. 111 OF 1962

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

- Short title.** 1. This Act may be called the Constitution (Fifteenth Amendment) Act, 1962.
- Amendment of article 124.** 2. In article 124 of the Constitution, after clause (2), the following clause shall be inserted, namely:—
 “(2A) If any question arises as to the age of a Judge of the Supreme Court, the question shall be decided by the President after making such inquiry as he may deem necessary and his decision shall be final.”
- Amendment of article 128.** 3. In article 128 of the Constitution, after the words “Federal Court”, the words “or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court” shall be inserted.
- Amendment of article 217.** 4. In article 217 of the Constitution,—
 (a) in clause (1), for the words “sixty years”, the words “sixty-two years” shall be substituted;
 (b) after clause (2), the following clause shall be inserted and shall be deemed always to have been inserted, namely:—
 “(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President

*The President has, in pursuance of clauses (1) and (3) of article 117 of the Constitution of India, recommended to Lok Sabha the introduction and consideration of the Bill.

after making such inquiry as he may deem necessary and his decision shall be final.”.

5. In article 220 of the Constitution, the following proviso shall be inserted before the *Explanation*, namely:—

Amendment
of article
220.

5 “Provided that where a Judge is transferred from one High Court to another High Court and he serves as a Judge of that High Court for a period of not less than five years immediately before retirement, he shall be entitled, on retirement, to plead or act in the Supreme Court and all the High Courts except the
10 High Court to which he was so transferred.”.

6. In article 222 of the Constitution, after clause (1), the following clause shall be inserted, namely:—

Amendment
of article
222.

15 “(2) When a Judge is so transferred, he shall, during the period he serves as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.”.

7. In article 224 of the Constitution, in clause (3), for the words
20 “sixty years”, the words “sixty-two years” shall be substituted.

Amendment
of article
224.

8. After article 224 of the Constitution, the following article shall be inserted, namely:—

Insertion of
new article
224A.

25 “224A Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by
30 order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court:

Appoint-
ment of
retired
Judges at
sittings
of High
Courts.

35 Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.”.

9. In article 226 of the Constitution,—

Amendment
of Article
226.

(a) after clause (1), the following clause shall be inserted namely:—

“(1A) The power conferred by clause (1) to issue

directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action for the exercise of such power arises, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”;

(b) in clause (2), for the word, brackets and figure “clause (1)”, the words, brackets, figures and letter “clause (1) or clause (1A)” shall be substituted.

Amendment
of article
276.

10. In article 276 of the Constitution, in clause (2), for the words “two hundred and fifty rupees”, wherever they occur, the words “five hundred rupees” shall be substituted.

Amendment
of article
297.

11. In article 297 of the Constitution, after the words “territorial waters”, the words “or the continental shelf” shall be inserted.

Amendment
of article
311.

12. In article 311 of the Constitution, for clauses (2) and (3), the following clauses shall be substituted, namely:—

“(2) No such person as aforesaid shall be dismissed or removed except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that this clause shall not apply—

(a) where a person is dismissed or removed on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person shall be final.”.

13. In article 316 of the Constitution, after clause (1), the following clause shall be inserted, namely:—

Amendment
of Article
316.

5 “(1A) If the office of the Chairman of the Commission be-
comes vacant or if any such Chairman is by reason of absence or
for any other reason unable to perform the duties of his office,
those duties shall, until some person appointed under clause (1)
to the vacant office has entered on the duties thereof or, as the
case may be, until the Chairman has resumed his duties, be
performed by such one of the other members of the Commission
10 as the President, in the case of the Union Commission or a Joint
Commission, and the Governor of the State in the case of a State
Commission, may appoint for the purpose.”.

14. In the Seventh Schedule to the Constitution, in List I, in
entry 78, after the word “organisation”, the brackets and words
15 “(including vacations)” shall be inserted and shall be deemed always
to have been inserted.

Amendment
of the
Seventh
Schedule.

STATEMENT OF OBJECTS AND REASONS

Several amendments to the Constitution have been under consideration for a long time. The Constitution (Fifth Amendment) Bill was introduced in Lok Sabha in November, 1955, to give effect to some of them. For various reasons, the Bill could not be proceeded with, and it was allowed to lapse except the one relating to the amendment of article 3 of the Constitution. This article was amended separately by the Constitution (Fifth Amendment) Act, 1955. The present Bill contains some of the proposals included in the Constitution (Fifth Amendment) Bill and, in addition, there are a few more proposals for amendment of the Constitution. The proposals relating to articles 276, 297, 311 and 316 of the Constitution were contained in the Constitution (Fifth Amendment) Bill and they have been adopted with some minor modifications. The new proposals relate to articles 124, 128, 217, 220, 222, 224A, 226 and entry 78 of the Union List.

2. It is proposed to amend article 217 so as to raise the age of retirement of High Court Judges from sixty years to sixty-two years. When any question arises to the correct age of a Judge of the Supreme Court or of a High Court, the question has to be decided by the President. It is proposed to make the position clear by making a specific provision in articles 124 and 217. It is considered desirable in the public interest that Judges should be transferred from one High Court to another. Such transfer is expected to impose additional financial burden on the Judge who is so transferred. It is, therefore, proposed to pay him some compensatory allowance in addition to his salary. When a Judge is transferred from one High Court to another, he cannot, in view of the provisions of article 220, resume practice in any of the High Courts in which he has held office as a Judge. The provisions of article 220 therefore put a check on the proposal for the transfer of any Judge of a High Court. It is, therefore, proposed to amend article 220 so that the restriction regarding resumption of practice should apply only to the High Court from which the Judge retires, provided that he had served in that High Court for a period of at least five years immediately before retirement. Such a provision would facilitate the transfer of Judges. Under the existing article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant

places. It is, therefore, proposed to amend article 226 so that when any relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue appropriate directions, orders or writs. The other new proposals are of a minor character.

3. The notes on clauses appended to the Bill explain the provisions thereof.

NEW DELHI;

A. K. SEN.

The 14th November, 1962.

Notes on clauses

Clause 2.—Under clause (2) of article 124, a Judge of the Supreme Court holds office until he attains the age of 65 years. When, however, any question arises as to the correct age of a Judge, it has to be decided by the President. It is considered desirable to have a specific provision to make the position clear. This clause seeks to achieve this object.

Clause 3.—Cases have arisen when, due to the absence of a Judge or Judges of the Supreme Court for any reason, it has become necessary to require the attendance of a retired Judge of the Supreme Court at the sittings of the Court. The number of retired Supreme Court Judges being small, and in view of the age of retirement provided for Supreme Court Judges, this field cannot be expected to be wide at any time. It is, therefore, necessary to suitably amend article 128 so as to enable the Chief Justice of India, with the previous consent of the President, to require the attendance of a retired Judge of a High Court, who is duly qualified for appointment as a Judge of the Supreme Court, at the sittings of the Supreme Court. This clause seeks to amend article 128 for achieving the above mentioned object.

Clause 4.—Under article 217, a Judge of a High Court is entitled to hold office until he attains the age of 60 years. The Law Commission in their Fourteenth Report had recommended that the retiring age be raised to sixty-five years. It was felt that the retiring age should be raised to sixty-two years. It is proposed to amend clause (1) of article 217 to raise the retiring age from 60 to 62 years.

It is also proposed to insert a new clause (3) in article 217 to make a specific provision enabling the President to determine the age of a Judge of a High Court. In some cases, decision has already been taken by Government determining the age of a Judge. It is, therefore, proposed to give retrospective effect to this clause.

Clause 5.—If a permanent Judge of a High Court is transferred to one or more High Courts, he cannot, in view of the provisions of article 220, resume practice after retirement in any of the High Courts in which he had held office as a Judge. The provisions of article 220, therefore, put a check on the proposal for the transfer of any Judge of a High Court. It is considered that a provision should

be made to the effect that when a Judge is transferred from one High Court to another, the restriction regarding resumption of practice, after retirement, should apply only to the High Court from which the Judge retires, provided that the Judge had served in the High Court for a period of at least five years immediately before retirement. Such a provision would facilitate the transfer of Judges of the High Courts. This clause seeks to achieve this object.

Clause 6.—The transfer of a Judge from one High Court to another is expected to impose additional financial burden on the Judge who is transferred. Hence it is proposed to pay to the Judge some compensatory allowance in addition to his salary. It is proposed that such compensatory allowance may be fixed by Parliament by law and until so determined, it may be fixed by an order of the President. This clause seeks to amend article 222 for the purpose.

Clause 7.—This clause amends article 224 on the lines proposed in respect of clause (1) of article 217.

Clause 8.—This clause seeks to insert a new article, namely article 224A, which would enable the Chief Justices of the State High Courts, with the previous consent of the President, to require the attendance of retired High Court Judges at the sittings of the High Courts.

Clause 9.—The recent decision of the Supreme Court, reported in A.I.R. (1961) S.C. 532, has established beyond doubt that as the seat of the Government of India is in New Delhi, the only High Court which will have jurisdiction under article 226 with respect to the Central Government would be the Punjab High Court. This would involve hardship to litigants from distant places. It is, therefore, necessary to amend article 226 so that the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue directions, orders or writs to any Government, authority for person, notwithstanding that the seat of such Government or authority or the residence of such person is outside the territorial jurisdiction of the High Court.

Clause 10.—The ceiling of Rs. 250/- fixed by clause (2) of article 276 as the maximum leviable by way of taxes by local authorities on professions, trades, callings and employments in respect of any person is considered to be too low. It is, therefore, proposed to raise the limit to Rs. 500/-.

Clause 11.—India's sovereign rights under International Law over the sea-bed and sub-soil of the continental shelf adjoining its territory and beyond its territorial waters have already been asserted

in a President's proclamation. As a corollary to that proclamation, article 297 is sought to be amended suitably by this clause.

Clause 12.—Article 311 is being amended so as—

(a) to make it clear that only one opportunity should be given to a Government servant in respect of any departmental enquiry against him; and

(b) to ensure that reduction in rank does not stand on a par with the more severe punishments of dismissal or removal from service and thus get a constitutional safeguard.

Clause 13.—There is no provision in article 316 for the appointment of an acting Chairman of a Public Service Commission when that office is vacant or when the permanent Chairman is on leave or is otherwise unable to perform the duties of his office. It is accordingly proposed to amend article 316 to provide for such appointment.

Clause 14.—A special Bench of the Calcutta High Court made an observation in the case reported in 65 C.W.N. 920, to the effect that the expression "organisation" occurring in entry 78 of List I of the Seventh Schedule to the Constitution does not include "vacations". The present clause seeks to amend the said entry with a view to make it clear that the expression "organisation" occurring therein includes "vacations". It is proposed to give retrospective effect to the proposed amendment.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the appointment of a retired Judge of a High Court to sit and act as a Judge of the Supreme Court. This only enlarges the field of appointment of Judges already existing under Article 128 of the Constitution and does not involve any additional expenditure.

2. Clause 4 of the Bill provides for the raising of the age of retirement of a High Court Judge from 60 to 62 years. Clause 7 similarly provides that an Additional Judge can continue to hold office up to the age of 62. This would result in increased pensions in certain cases. The pensions payable to the Judges are first charged on the Consolidated Fund of India under Article 112(3) (d) of the Constitution, but these amounts are subsequently recovered from the States concerned under Article 290 of the Constitution.

3. Clause 6 of the Bill provides for the payment of compensatory allowance to a Judge on his transfer from one High Court to another. The additional expenditure on this account will depend on the number of Judges transferred and the exact allowances fixed. It is not possible to give an accurate estimate of the amount of extra expenditure involved. This addition, however, would not be on the Consolidated Fund of India but on the Consolidated Fund of the States concerned.

4. Clause 8 of the Bill provides for the appointment of a retired High Court Judge to sit and act as a Judge of a High Court. Some additional expenditure will be involved when such an appointment is made, and it will be a charge on the Consolidated Fund of the State concerned.

5. It will thus appear that ultimately no additional expenditure from the Consolidated Fund of India would be involved.

*BILL NO. 112 OF 1962

A Bill to provide for the establishment of a Committee for ensuring the quality of textiles and textile machinery and for matters connected therewith.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Textiles Committee Act, 1962.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

5

(3) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "Chairman" means the Chairman of the Committee; 10

(b) "Committee" means the Committee established under section 3;

(c) "Fund" means the Textiles Fund referred to in section 7;

(d) "member" means a member of the Committee and includes the Chairman and the Vice-Chairman; 15

(e) "prescribed" means prescribed by rules made under this Act;

*The President has, in pursuance of clause (1) and (3) of article 117 of the Constitution of India, recommended to Lok Sabha the introduction and consideration of the Bill.

(f) "textile machinery" means the equipment employed directly or indirectly for the processing of textile fibre into yarn and for the manufacture of fabric therefrom by weaving or knitting and includes equipment used either wholly or partly for the finishing, folding or packing of textiles;

(g) "textiles" means any fabric or cloth or yarn made wholly or in part of cotton, or wool or silk or artificial silk or other fibre;

(h) "Vice-Chairman" means the Vice-Chairman of the Committee.

3. (1) The Central Government shall, by notification in the Official Gazette, establish with effect from such date as may be specified in the notification, a Committee to be known as the Textiles Committee, which shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and may, by that name, sue or be sued.

Establishment of Textiles Committee.

(2) The Head Office of the Committee shall be in Bombay.

(3) The Committee shall consist of—

(a) a Chairman to be appointed by the Central Government;

(b) a Vice-Chairman who shall be the Textile Commissioner, *ex officio*;

(c) a Joint Secretary to the Government of India to be appointed by the Central Government, *ex officio*;

(d) such other members as the Central Government may think fit to appoint who, in the opinion of that Government, have special knowledge or practical experience in matters relating to the textile industry and trade and the manufacture of textile machinery.

4. (1) Subject to the provisions of this Act, the functions of the Committee shall generally be to ensure by such measures, as it thinks fit, standard qualities of textiles both for internal marketing and export purposes and the manufacture and use of standard type of textile machinery.

Functions of the Committee.

(2) Without prejudice to the generality of the provisions of subsection (1), the Committee may—

(a) undertake, assist and encourage scientific, technological and economic research in textile industry and textile machinery;

(b) promote export of textiles and textile machinery and carry on propaganda for that purpose;

(c) evolve standard varieties of textiles for internal consumption and for the purposes of export and for affixing suitable marks registered under the Trade and Merchandise Marks Act, 1958 on such standardised varieties of textiles;

43 of 1958.

(d) evolve standards of inspection of textiles and textile machinery;

(e) provide for the inspection and examination of—

(i) textiles;

10

(ii) textile machinery at any stage of manufacture and also while it is in use at mill-heads;

(f) establish laboratories and test houses for the testing of textiles;

(g) provide for testing textiles and textile machinery in laboratories and test houses other than those established under clause (f);

(h) collect statistics for any of the above mentioned purposes from—

(i) manufacturers of, and dealers in, textiles;

20

(ii) manufacturers of textile machinery; and

(iii) such other persons as may be prescribed;

(i) advise on all matters relating to the development of textile industry and the production of textile machinery;

(j) provide for such other matters as may be prescribed.

25

(3) In the discharge of its functions, the Committee shall be bound by such directions as the Central Government may, for reasons to be stated in writing, give to it from time to time.

Powers of
the Committee.

5. The Committee may exercise all such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act. 30

Grants by
Central Government
to the Committee.

6. For the purpose of enabling the Committee to discharge its functions under this Act, the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Committee in each financial year such sums of money as that Government considers necessary by way of grant, loan or otherwise. 35

7. (1) The Committee shall have a Fund to be called the Textiles Fund and there shall be credited thereto— Constitution of Fund.

(a) all moneys transferred to it under clause (a) of subsection (2) of section 24;

5 (b) all moneys paid by the Central Government under section 6;

(c) all fees and other charges levied under this Act;

(d) all moneys received by the Committee by way of grant, gift, donation, contribution, transfer or otherwise.

10 (2) The moneys in the Fund shall be applied for—

(a) meeting the pay and allowances of the officers and other employees of the Committee and other administrative expenses of the Committee;

(b) carrying out the purposes of this Act.

15 (3) All moneys in the Fund shall be deposited in the State Bank of India or be invested in such securities as may be approved by the Central Government.

8. (1) The Committee may constitute Standing Committees or *ad hoc* Committees for exercising any power or discharging any duty of the Committee or for inquiring into or reporting and advising on any matter which the Committee may refer to them. Standing or *ad hoc* Committees.

(2) A Standing Committee shall consist exclusively of members of the Committee.

25 (3) An *ad hoc* Committee may include persons who are not members of the Committee but their number shall not exceed one half of its strength.

9. (1) The Central Government shall, in consultation with the Committee, appoint a person to be the Secretary of the Committee. Officers and other employees of the Committee.

30 (2) Subject to such rules as may be made by the Central Government in this behalf, the Committee may appoint such other officers and employees as it considers necessary for the efficient performance of its functions.

(3) The methods of appointment, the conditions of service and the scales of pay of the officers and other employees of the Committee shall,—

(a) as respects the Secretary, be such as may be prescribed;

and

(b) as respect the other officers and employees, be such as may be determined by regulations made by the Committee under this Act.

Transfer of service of existing employees to the Committee.

10. Subject to the provisions of this Act, every person employed by the Cotton Textiles Fund Committee constituted under section 5 of the Cotton Textiles Fund Ordinance, 1944, immediately before the date of establishment of the Committee shall, on and from such date, become an employee of the Committee with such designation as the Committee may determine and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions as he would have held on such date if the Committee had not been established and shall continue to do so unless and until his employment in the Committee is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Committee:

34 of 1944.

Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government.

Inspection.

11. (1) The Committee may, on application made to it or otherwise, direct an officer specially authorised in that behalf to examine the quality of textiles or the suitability of textile machinery for use at the time of manufacture or while in use in a textile mill and submit a report to the Committee.

(2) Subject to any rules made under this Act, such an officer shall have power to—

(a) inspect any operation carried on in connection with the manufacture of textiles or textile machinery in relation to which construction particulars, marks or inspection standards have been specified;

(b) take samples of any article or of any material or substance used in any article or process in relation to which construction particulars, marks or inspection standards have been specified;

(c) exercise such other powers as may be prescribed.

(3) On receipt of the report referred to in sub-section (1), the Committee may tender such advice, as it may deem fit, to the manufacturer of textiles, the manufacturer of textile machinery and the applicant.

12. (1) The Committee may levy such fees as may be prescribed—

Levy of fees
for inspection
and examination.

(a) for inspection and examination of textiles,

(b) for inspection and examination of textile machinery,

(c) for any other service which the Committee may render to the manufacturers of textiles and textile machinery;

Provided that the Central Government may, by notification in the Official Gazette, exempt from the payment of fees, generally or in any particular case.

10 (2) Any sum payable to the Committee under sub-section (1) may be recovered as an arrear of land revenue.

13. (1) The Committee shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including a balance-sheet in such form as may be prescribed by rules
15 made under this Act.

Accounts
and audit.

(2) The accounts of the Committee shall be audited annually by the Comptroller and Auditor-General of India or by such other auditors qualified to act as auditors of companies under the law for the time being in force relating to companies, as the Government
20 may appoint.

(3) The auditors shall, at all reasonable times, have access to the books of accounts and other documents of the Committee and may, for the purposes of the audit, call for such explanation and information as they may require or examine any member or officer of
25 the Committee.

(4) The auditors shall forward to the Government a copy of their report together with an audited copy of the accounts of the Committee.

(5) The cost of the audit as determined by the Central Government
30 shall be paid out of the Fund.

14. The Committee may, by general or special order in writing, direct that all or any of the powers or duties which may be exercised or discharged by it shall, in such circumstances and under such conditions, if any, as may be specified in its order, be exercised or
35 discharged also by any officer or employee of the Committee specified in this behalf in the order.

Delegation
of powers
and duties.

15. No act or proceeding of the Committee shall be invalidated merely by reason of—

Acts or proceedings of
Committee
not to be
invalidated.

40 (a) any vacancy in, or any defect in the constitution of, the Committee; or

(b) any defect in the appointment of a person acting as a member of the Committee; or

(c) any irregularity in the procedure of the Committee not affecting the merits of the case.

Officers and employees of the Committee to be public servants.

16. All officers and employees of the Committee shall, while acting or purporting to act in pursuance of the provisions of this Act or of any rule or regulation made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Power to prohibit exports and internal marketing of textiles and textile machinery.

17. (1) Where the Committee has evolved any standard variety of textiles either for internal consumption or for the purposes of export or has evolved standard type of textile machinery and on the recommendation made to it in this behalf, the Central Government is of opinion that any textiles or textile machinery which do not conform to the standards laid by the Committee in respect thereof, should not be exported or sold for internal consumption, the Central Government may, by order published in the Official Gazette, prohibit such export or sale.

(2) If any person contravenes any order issued under sub-section (1) prohibiting—

(a) the export of any textiles or textile machinery, or

(b) the sale of any textiles or textile machinery for internal consumption,

he shall, on conviction, be punishable,—

(i) for the first offence with imprisonment for a term which may extend to one year or with fine or with both;

(ii) for the second or a subsequent offence with imprisonment for a term which may extend to one year and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than three months.

(3) All textiles and textile machinery to which an order prohibiting export applies under sub-section (1), shall be deemed to be textiles or textile machinery of which the export has been prohibited under section 19 of the Sea Customs Act, 1878 and all the provisions of that Act shall have effect accordingly.

(4) Nothing in clause (a) of sub-section (2) shall affect any confiscation or penalty to which the person may be liable under the provisions of the Sea Customs Act, 1878 as applied by sub-section (3).

8 of 1878.

(5) Any court trying the contravention of an order prohibiting the marketing of textiles or textile machinery under sub-section (1) may, without prejudice to the provisions of clause (b) of sub-section (2), direct that the textiles or textile machinery in respect of which the court is satisfied that such contravention has been committed, shall be forfeited to the Central Government.

18. (1) If the person committing any offence under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) “company” means a body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

19. No prosecution for any offence punishable under this Act shall be instituted except by or with the consent of the Central Government.

Procedure for prosecution.

20. No court inferior to that of a Presidency Magistrate or a Magistrate of the first class, shall try any offence punishable under this Act.

Jurisdiction of courts.

21. No suit, prosecution or other legal proceeding shall lie against the Committee or any member, officer or employee of the Committee for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or regulation made thereunder.

Protection of action taken under the Act.

Power to
make rules.

22. (1) The Central Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for— 5

(a) the number of members and the composition of the Committee and the manner in which the members shall be chosen;

(b) the term of office of and the manner of filling casual vacancies among the members of the Committee; 10

(c) the allowances, if any, payable to the members of the Committee;

(d) the disqualification for membership of the Committee;

(e) the scale of fees that may be levied for inspection 15 and examination under section 12.

(f) the form in which the Committee shall prepare its annual statement of accounts and balance-sheet;

(g) the method of appointment, the conditions of service and the scale of pay of the Secretary of the Committee; 20

(h) the collection of any information or statistics in respect of textile industry and trade and the manufacture of textile machinery;

(i) the mode of inspection by the Committee and the manner in which samples may be taken by it. 25

(3) Every rule made under this section by the Central Government shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid 30 or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice 35 to the validity of anything previously done under that rule.

Power to
make regula-
tions.

23. (1) The Committee may, with the previous sanction of the Central Government, by notification in the Official Gazette, make regulations, not inconsistent with this Act and the rules made

thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the meeting of the Committee, Standing Committees and *ad hoc* Committees, the quorum for such meetings and the conduct of business thereat;

(b) the allowances payable to the members of the Standing Committees or the *ad hoc* Committees;

(c) the methods of appointment, the conditions of service and the scales of pay of the officers (other than the Secretary) and other employees of the Committee;

(d) the duties and conduct of officers and other employees of the Committee; and

(e) any other matter in respect of which the Committee is empowered or required to make regulations under this Act.

(3) The Central Government may, by notification in the Official Gazette, amend, vary or rescind any regulation which it has sanctioned; and thereupon the regulation shall have effect accordingly, but without prejudice to the exercise of the powers of the Committee under sub-section (1).

24. (1) With effect from the date on which the Committee is established under section 3, the Cotton Textiles Fund Ordinance, 1944 shall stand repealed.

Repeal and saving.

(2) Notwithstanding the repeal of the said Ordinance,—

(a) all moneys at the credit of the Cotton Textiles Fund established under the repealed Ordinance immediately before the said date shall with effect from the said date stand transferred to and form part of the Textiles Fund referred to in section 7;

(b) any rules made or deemed to have been made or anything done or any action taken in exercise of any of the powers conferred by or under the said Ordinance shall be deemed to have been made, done or taken in exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such rules were made, such thing was done or such action was taken.

STATEMENT OF OBJECTS AND REASONS

The Cotton Textiles Fund Ordinance, 1944 provides for the establishment of a cotton textiles Fund and the constitution of a Committee to administer the Fund. This Fund was originally created from the proceeds of the levy of a duty of customs at 3% on the ex-mill prices of cloth and yarn exported, and later on, the Central Government used to make contributions to the Fund. The Cotton Textiles Fund Committee has been doing useful work and the inspection scheme of the Committee has found increasing popularity and authenticity in trade circles, both in India and abroad.

2. In recent years, however, conditions in the textiles industry have changed. Indian cloth is facing ever-increasing competition in the international markets from other exporting countries like Japan, China, etc. The Millowners Association and the manufacturers of textile machinery in India have been stressing the necessity of an Independent Inspectorate for indigenous textile machinery. In order to meet their needs, the Tariff Commission recommended in 1960 that adequate arrangements should be made for an impartial investigation of all complaints from the consuming industries about the quality of indigenous products and for keeping a continuous watch over the progress of the textile machinery as a whole. Under the existing Ordinance, the powers of the Committee have not been clearly defined and they are also restricted in scope.

3. It is therefore considered necessary that in the interests of textile industry the Committee should be re-constituted and its functions should be enlarged. It is accordingly proposed to establish a Committee which shall be a body corporate and it should be vested with enlarged statutory powers. Under the existing Ordinance, the functions of the Committee were restricted to cloth and yarn only. It is proposed to empower the Committee to ensure the quality of all textiles, whether made wholly or partly of cotton, wool, silk, artificial silk or fibre. It is further considered that the work of inspection of indigenous textile machinery and stores should also be entrusted to the Committee. The functions of the Committee should generally be to ensure standard qualities of textiles for internal marketing and export purposes and the manufacture and use of standard type of textile machinery.

4. The present Bill seeks to achieve the above objects and to replace the existing Cotton Textiles Fund Ordinance, 1944.

NEW DELHI;

MANUBHAI SHAH.

The 14th November, 1962.

FINANCIAL MEMORANDUM

Clause 6 of the Bill provides for the Central Government making grants to the Textiles Committee. This is intended to enable the Committee to meet the pay and allowances of the officers and other employees of the Committee and other administrative expenses of the Committee and also to ensure by such measures, as it thinks fit, standard qualities of textiles both for internal marketing and export purposes and the manufacture and use of standard type of textile machinery.

2. The balance standing at the credit of the Cotton Textiles Fund established under the Cotton Textiles Fund Ordinance, 1944 as on the 10th October, 1962 was of the order of Rs. 78 lakhs. By virtue of clause 24(2) of the Bill all moneys standing at the credit of the Cotton Textiles Fund shall stand transferred to and form part of the Textiles Fund with effect from the date on which the Cotton Textiles Fund Ordinance, 1944 is repealed. Besides under clause 12(1) of the Bill the Committee may levy such fees as may be prescribed for inspection and examination of textiles, for inspection and examination of textile machinery and for any other service which the Committee may render to the manufacturers of textiles and textile machinery. It is not possible to give precisely at this stage the amount of fees that the Committee may collect for inspection of textiles, etc. However, it is expected that the scheme of inspection of the Committee will be a self-supporting one.

3. The non-recurring and recurring expenditure of the Committee is estimated at about Rs. 4 lakhs and Rs. 26.3 lakhs respectively. For the present the need for making any specific grant by the Central Government to the Fund may not arise.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 22 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Act. The matters in respect of which such rules may be made relate, *inter alia*, to the composition of the Textile Committee, the manner in which the members shall be chosen, the term of office, the allowances, if any, payable to the members and similar matters of detail.

2. Clause 23 of the Bill enables the Committee to make regulations. The matters in respect of which regulations may be made relate to procedure like the conduct of meetings, methods of appointment, conditions of service, of officers and other employees of the Committee.

3. The matters in respect of which rules and regulations can be made are thus matters of procedure or administrative detail. The delegation of powers is thus of a normal character.

M. N. KAUL,
Secretary.